

MONTANA LEGISLATIVE HISTORY

Chapter 359 19 77

Bill H _____ S 34 Original bill & history / c

H. Committee on JUDICIARY

Hearing Date(s) 3/4 X c

EXEC. ACTION 3/22 X c

_____ c

_____ c

Date Out _____ c

S. Committee on JUDICIARY

Hearing Date(s) 1/17 X c

1/18 X c

EXEC. ACTION 1/29 X c

_____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

Apparently, there was a House subcommittee report - we have no record of this.

1977

COMMITTEE ON

JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
S.B. 9	1-3-77	1-11-77	1-15-77			1-15-77			
S.B. 12	1-3-77	2-16-77	2-18-77			2-18-77			
S.B. 20	1-3-77	1-7-77	1-7-77			1-7-77			
S.B. 23	1-11-77	1-18-77	1-29-77		1-29-77				
S.B. 23	Rereferred 2-1-77	2-4-77				2-4-77			
S.B. 27	1-3-77	1-11 & 1-14-77	2-17-77			2-17-77			
S.B. 30	1-3-77	1-11, 1-13, 1-17-77	1-17-77			1-20-77			
S.B. 32	1-3-77	Duplicate of S.B. 40	2-10-77		2-10-77				
S.B. 33	1-3-77	1-11 & 1-14-77	2-17-77			2-17-77			
S.B. 34	1-3-77	1-17, 1-18, 1-28, 1-29-77	1-31-77			1-31-77			
S.B. 37	1-4-77	1-14-77	2-10-77			2-10-77			
S.B. 40	1-5-77	1-12-77	1-20-77	1-20-77					
S.B. 41	1-5-77	1-12 & 1-20-77	2-18-77			2-18-77			
S.B. 42	1-5-77	1-12 & 1-20-77	1-20-77	1-20-77					
S.B. 43	1-5-77	1-12 & 1-20-77	1-20-77			1-20-77			
S.B. 53	1-6-77	1-12 & 1-20-77	1-20-77	1-20-77					

(Use Separate Sheet for Senate, House Bills, and Resolutions)

1 SENATE BILL NO. 34
2 INTRODUCED BY HAZELBAKER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
5 REVISION OF THE LAWS CONCERNING CRIMES."

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Section 54-132, R.C.M. 1947, is amended to
9 read as follows:

10 "54-132. Criminal sale of dangerous drugs. ~~(a)(1)~~ A
11 person commits the offense of a criminal sale of dangerous
12 drugs if he sells, barter, exchanges, gives away, or offers
13 to sell, barter, exchange, or give away, or manufactures,
14 prepares, cultivates, compounds, or processes any dangerous
15 drug, as defined in ~~this act~~ 54-301.

16 ~~(b)(2)~~ A person convicted of criminal sale of
17 dangerous drugs shall be imprisoned in the state prison for
18 a term of not less than ~~one~~ (1) year ~~or~~ or more than life.

19 ~~(c)(3)~~ Practitioners and agents under their
20 supervision acting in the course of a professional practice,
21 as defined by 54-301, are exempt from this section."

22 Section 2. Section 54-133, R.C.M. 1947, is amended to
23 read as follows:

24 "54-133. Criminal possession of dangerous drugs.
25 ~~(a)(1)~~ A person commits the offense of criminal possession

1 of dangerous drugs if he possesses any dangerous drug, as
2 defined in ~~this act~~ 54-301.

3 ~~(b)(2)~~ Any person convicted of a criminal possession
4 of ~~marihuana~~ marijuana or its derivatives in an amount, the
5 aggregate weight of which does not exceed ~~sixty~~ (60) grams
6 of ~~marihuana~~ marijuana, or ~~one~~ (1) gram of hashish, shall
7 is, for the first offense, be guilty of a misdemeanor and is
8 punishable by a fine not to exceed ~~one thousand dollars~~
9 ~~(\$1,000)~~ or by imprisonment in the county jail for a term
10 not to exceed ~~one~~ (1) year, or by both such fine and
11 imprisonment. A person convicted of a second, or subsequent,
12 offense under this subsection is punishable by a fine not to
13 exceed ~~one thousand dollars~~ (\$1,000) or by imprisonment in
14 the county jail for a term not to exceed ~~one~~ (1) year or in
15 the state prison for a term not to exceed ~~three~~ (3) years or
16 by both such fine and imprisonment.

17 ~~(c)(3)~~ A person convicted of criminal possession of
18 dangerous drugs not otherwise provided for in subsection
19 ~~(b)(2)~~ shall be imprisoned by ~~imprisonment~~ in the state
20 prison for a term not to exceed ~~five~~ (5) years.

21 ~~(d)(4)~~ A person of the age of ~~twenty-one~~ (21) years or
22 under, convicted of a first violation under this section
23 shall be presumed to be entitled to a deferred imposition of
24 sentence.

25 ~~Jurisdiction under this section shall be exclusively in~~

INTRODUCED BILL

~~the district court.~~

(5) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 54-301, are exempt from this section."

Section 3. Section 54-134, R.C.M. 1947, is amended to read as follows:

"54-134. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug, as defined in 54-301, by:

~~(a)~~ (1) fraud, deceit, misrepresentation, or subterfuge;

~~(b)~~ (2) falsely assuming the title of, or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other persons person authorized to possess dangerous drugs;

~~(c)~~ (3) the use of a forged, altered, or fictitious prescription;

~~(d)~~ (4) the use of a false name or a false address on a prescription; or

~~(e)~~ (5) the concealment of a material fact."

Section 4. Section 54-135, R.C.M. 1947, is amended to read as follows:

"54-135. Altering labels on dangerous drugs. A person

commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to or otherwise misrepresents a package or receptacle containing a dangerous drug, ~~or otherwise misrepresents the package containing a dangerous drug as defined in 54-301."~~

Section 5. Section 54-137, R.C.M. 1947, is amended to read as follows:

"54-137. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs, fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 54-301, either from the face of the record or by a presentence investigation, may, in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than ~~six~~ (6) months ~~or~~ or more than ~~two~~ (2) years."

Section 6. Section 54-138, R.C.M. 1947, is amended to read as follows:

"54-138. Jurisdiction. The district court ~~shall have~~ has exclusive trial jurisdiction over all prosecutions commenced under ~~the Montana Dangerous Drug Act~~ this chapter."

Section 7. Section 94-1-103, R.C.M. 1947, is amended to read as follows:

"94-1-103. Application to offenses committed before and after enactment. (1) The provisions of this code shall apply to any offense defined in this code and committed after ~~the effective date thereof~~ January 1, 1974.

(2) Unless otherwise expressly provided, or unless the context otherwise requires, the provisions of this ~~code~~ shall title and Title 95 govern the construction of and punishment for any offense defined outside of this code and committed after ~~the effective date thereof~~ January 1, 1974, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of this code do not apply to any offense defined outside of this code and committed before ~~the effective date thereof~~ January 1, 1974. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this code had not been enacted."

Section 8. Section 94-1-105, R.C.M. 1947, is amended to read as follows:

"94-1-105. Classification of offenses. (1) For the determination of the court's jurisdiction at the commencement of the action and for the determination of the commencement of the period of limitations, the offense shall be designated a felony or misdemeanor based upon the maximum potential sentence which could be imposed by statute.

(2) An offense defined by any statute of this state other than this code shall be classified as provided in this section and the sentence that may be imposed upon conviction thereof shall be governed by this ~~code~~ title and Title 95."

Section 9. Section 94-1-106, R.C.M. 1947, is amended to read as follows:

"94-1-106. General time limitations. (1) A prosecution for criminal homicide may be commenced at any time.

(2) Except as otherwise provided ~~in this code by law~~, prosecutions for other offenses are subject to the following periods of limitation:

(a) a prosecution for ~~any~~ a felony must be commenced within ~~five~~ (5) years after it is committed;

(b) a prosecution for a misdemeanor must be commenced within ~~one~~ (1) year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) ~~If~~ if the aggrieved person is a minor or incompetent, ~~then~~ during the minority or incompetency or within ~~one~~ (1) year after the termination thereof;

(b) ~~in~~ in any other instance, within ~~one~~ (1) year after the discovery of the offense by the aggrieved person, or by a person who has legal capacity to represent an aggrieved person, or has a legal duty to report the offense,

and is not himself a party to the offense, or, in the absence of such discovery, within one--(1) year after the prosecuting officer becomes aware of the offense.

(4) An offense is committed either when every element occurs, or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(5) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

Section 10. Section 94-2-101, R.C.M. 1947, is amended to read as follows:

"94-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary grammatical meaning and includes any bodily movement, any form of communication, and, where relevant, includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the offender.

(3) "Administrative proceeding" means any proceeding

the outcome of which is required to be based on a record or documentation prescribed by law, or in which a law or a regulation is particularized in its application to an individual.

(4) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective, or by a common purpose or plan and which resulted results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts, and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or

1 finding of guilty of an offense, rendered by a legally
2 constituted jury or by a court of competent jurisdiction
3 authorized to try the case without a jury.

4 (10) "Correctional institution" means the state prison,
5 county or city jail, or other institution for the
6 incarceration or custody of persons under sentence for
7 offenses or awaiting trial or sentence for offenses.

8 (11) "Deception" means knowingly to:

9 (a) create or confirm in another an impression which
10 is false and which the offender does not believe to be true;
11 ~~or~~

12 (b) fail to correct a false impression which the
13 offender previously has created or confirmed; ~~or~~

14 (c) prevent another from acquiring information
15 pertinent to the disposition of the property involved; ~~or~~

16 (d) sell or otherwise transfer or encumber property,
17 failing to disclose a lien, adverse claim, or other legal
18 impediment to the enjoyment of the property, whether such
19 impediment is or is not of value or is or is not a matter of
20 official record; or

21 (e) promise performance which the offender does not
22 intend to perform or knows will not be performed. Failure to
23 perform standing alone is not evidence that the offender did
24 not intend to perform.

25 (12) "Defamatory matter" means anything which exposes a

1 person or a group, class, or association to hatred,
2 contempt, ridicule, degradation, or disgrace in society, or
3 injury to his or its business or occupation.

4 (13) "Deprive" means to withhold property of another:

5 (a) permanently; ~~or~~

6 (b) for such a period as to appropriate a portion of
7 its value; ~~or~~

8 (c) with the purpose to restore it only upon payment
9 of reward or other compensation; or

10 (d) to dispose of the property and use or deal with
11 the property so as to make it unlikely that the owner will
12 recover it.

13 (14) "Deviate sexual relations" means sexual contact or
14 sexual intercourse between two ~~(2)~~ persons of the same sex,
15 or any form of sexual intercourse with an animal.

16 (15) "Felony" means an offense in which the sentence
17 imposed upon conviction is death or imprisonment in the
18 state prison for any term exceeding ~~one~~ ~~(1)~~ year.

19 (16) "A frisk" is a search by an external patting of a
20 person's clothing.

21 (17) "Forcible felony" means any felony which involves
22 the use or threat of physical force or violence against any
23 individual.

24 (18) "Government" includes any branch, subdivision, or
25 agency of the government of the state or any locality within

1 it.

2 (19) "Harm" means loss, disadvantage, or injury, or
3 anything so regarded by the person affected, including loss,
4 disadvantage, or injury to any person or entity in whose
5 welfare he is interested.

6 ~~(20) "He, she, it." The singular term shall include the~~
7 ~~plural and the masculine gender the feminine except where a~~
8 ~~particular context clearly requires a different meaning.~~

9 ~~(21) (20)~~ "A house of prostitution" means any place
10 where prostitution or promotion of prostitution is regularly
11 carried on by one ~~(1)~~ or more persons under the
12 control, management, or supervision of another.

13 ~~(22) (21)~~ "Human being" means a person who has been born
14 and is alive.

15 ~~(23) (22)~~ "An illegal article" is an article or thing
16 which is prohibited by statute, rule, regulation or order
17 from being in the possession of a person subject to official
18 detention.

19 ~~(24) (23)~~ "Inmate" means a person who engages in
20 prostitution in or through the agency of a house of
21 prostitution.

22 ~~(25) (24)~~ "Intoxicating substance" means any controlled
23 substance as defined in chapter 3 of Title 54, V.C.A. --1943,
24 and any alcoholic beverage including but not limited to any
25 beverage containing ~~one-half-of-one-per-centum~~ (1/2 of 1%).

1 or more of alcohol by volume, ~~provided, that the~~ The
2 foregoing definition shall not extend to dealcoholized wine,
3 ~~nor or~~ to any beverage or liquid produced by the process by
4 which beer, ale, port, or wine is produced, if it contains
5 less than ~~one-half-of-one-per-centum~~ (1/2 of 1%) of alcohol
6 by volume.

7 ~~(26) (25)~~ "An involuntary act" means any act which is:

8 (a) a reflex or convulsion; ~~or~~

9 (b) a bodily movement during unconsciousness or sleep;

10 ~~or~~

11 (c) conduct during hypnosis or resulting from hypnotic
12 suggestion; or

13 (d) a bodily movement that otherwise is not a product
14 of the effort or determination of the actor, either
15 conscious or habitual.

16 ~~(27) (26)~~ "Juror" means any person who is a member of
17 any jury, including a grand jury, impaneled by any court in
18 this state in any action or proceeding or by any officer
19 authorized by law to impanel a jury in any action or
20 proceeding. The term "juror" also includes a person who has
21 been drawn or summoned to attend as a prospective juror.

22 ~~(28) (27)~~ "Knowingly" ~~means~~ A a person acts knowingly with
23 respect to conduct or to a circumstance described by a
24 statute defining an offense when he is aware of his conduct
25 or that the circumstance exists. A person acts knowingly

with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

~~(29)~~ (28) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

~~(30)~~ (29) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as result of the influence of an intoxicating substance.

~~(31)~~ (30) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both, or the sentence imposed is imprisonment in the state prison for any term of ~~one~~ 1 year or less.

~~(32)~~ (31) "Negligently" ~~means~~ a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists, or if he disregards a risk of which he should be

aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. Gross deviation means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

~~(33)~~ (32) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

~~(34)~~ (33) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or ~~the~~ sale, conveyance, ~~or~~ transfer of title to, ~~or~~ interest in, or possession of property.

~~(35)~~ (34) "Occupied structure" means any building, vehicle, or other place suited for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two ~~(2)~~ or more units separately secured or occupied is a separate occupied structure.

~~(36)~~ (35) "Offender" means a person who has been or is

1 liable to be arrested, charged, convicted, or punished for a
2 public offense.

3 ~~(37)~~ (36) "Offense" means a crime for which a sentence
4 of death or of imprisonment or fine is authorized. Offenses
5 are classified as felonies or misdemeanors.

6 ~~(38)~~ (37) "Official detention" means imprisonment which
7 resulted resulting from a conviction for an offense,
8 confinement for an offense, confinement of a person charged
9 with an offense, detention by a peace officer pursuant to
10 arrest, detention for extradition or deportation, or any
11 lawful detention for the purpose of the protection of the
12 welfare of the person detained or for the protection of
13 society, ~~but--~~ Official "Official detention" does not
14 include supervision of probation or parole, constraint
15 incidental to release on bail, or an unlawful arrest unless
16 the person arrested employed physical force, a threat of
17 physical force, or a weapon to escape.

18 ~~(39)~~ (38) "Official proceeding" means a proceeding heard
19 or which may be heard before any legislative, judicial,
20 administrative, or other governmental agency or official
21 authorized to take evidence under oath, including any
22 referee, hearing examiner, commissioner, notary, or other
23 person taking testimony or deposition in connection with
24 such proceeding.

25 ~~(40)~~ (39) "Other state" means any state or territory of

1 the United States, the District of Columbia, and the
2 Commonwealth of Puerto Rico.

3 ~~(42)~~ (40) "Owner" means a person, other than the
4 offender, who has possession of or any other interest in the
5 property involved, even though such interest or possession
6 is unlawful, and without whose consent the offender has no
7 authority to exert control over the property.

8 ~~(42)~~ (41) "Party official" means a person who holds an
9 elective or appointive post in a political party in the
10 United States by virtue of which he directs, or conducts, or
11 participates in directing or conducting party affairs at any
12 level of responsibility.

13 ~~(43)~~ (42) "Peace officer" means any person who by virtue
14 of his office or public employment is vested by law with a
15 duty to maintain public order or to make arrests for
16 offenses while acting within the scope of his authority.

17 ~~(44)~~ (43) "Pecuniary benefit" is benefit in the form of
18 money, property, commercial interests, or anything else the
19 primary significance of which is economic gain.

20 ~~(45)~~ (44) "Person" includes an individual, business
21 association, partnership, corporation, government, or other
22 legal entity, and an individual acting or purporting to act
23 for or on behalf of any government or subdivision thereof.

24 ~~(46)~~ (45) "Physically helpless" means that a person is
25 unconscious or is otherwise physically unable to communicate

unwillingness to act.

~~(47)~~ (46) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

~~(48)~~ (47) "Premises" includes any type of structure or building and any real property.

~~(49)~~ (48) "Property" means anything of value. Property includes, but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments ~~representing~~ which represent or ~~embodying~~ embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, ~~or~~ affixed to, or found on land, ~~or~~ and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish, which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions,

photographs, prototypes, or models thereof; ~~or~~ and

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information, or a secret designed process, procedure, formula, invention, or improvement.

~~(50)~~ (49) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has not authority to defeat or impair, even though the offender himself may have an interest in the property.

~~(51)~~ (50) "Public place" means any place to which the public or any substantial group thereof has access.

~~(52)~~ (51) "Public servant" means any officer or employee of government, including but not limited to, legislators, judges, and firemen, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary, ~~but the~~ The term does not include witnesses. The term public servant includes one who has been elected or designated to become a public servant.

~~(53)~~ (52) "Purposely"—~~a~~ a person acts purposely with respect to a result or to conduct described by a statute

1 defining an offense if it is his conscious object to engage
2 in that conduct or to cause that result. When a particular
3 purpose is an element of an offense, the element is
4 established although such purpose is conditional, unless the
5 condition negatives the harm or evil sought to be prevented
6 by the law defining the offense. Equivalent terms such as
7 "purpose" and "with the purpose" have the same meaning.

8 ~~(54)~~ (53) "Serious bodily injury" means bodily injury
9 which creates a substantial risk of death or which causes
10 serious permanent disfigurement, or protracted loss or
11 impairment of the function or process of any bodily member
12 or organ, and it includes serious mental illness or
13 impairment.

14 ~~(55)~~ (54) "Sexual contact" means any touching of the
15 sexual or other intimate parts of the person of another for
16 the purpose of arousing or gratifying the sexual desire of
17 either party.

18 ~~(56)~~ (55) "Sexual intercourse" means penetration of the
19 vulva, anus, or mouth of one person by the penis of another
20 person, ~~or~~ penetration of the vulva or anus of one person by
21 any body member of another person, or penetration of the
22 vulva, or anus of one person by any foreign instrument or
23 object manipulated by another person for the purpose of
24 arousing or gratifying the sexual desire of either party.
25 Any penetration, however slight, is sufficient.

1 ~~(57)~~ (56) "Solicit" or "solicitation" means to command,
2 authorize, urge, incite, request, or advise another to
3 commit an offense.

4 ~~(58)~~ (57) "State" or "this state" means the state of
5 Montana, and all the land and water in respect to which the
6 state of Montana has either exclusive or concurrent
7 jurisdiction, and the air space above such land and water.

8 ~~(59)~~ (58) "Statute" means any act of the legislature of
9 this state.

10 ~~(60)~~ (59) "Stolen property" means property over which
11 control has been obtained by theft.

12 ~~(61)~~ (60) "A stop" is the temporary detention of a
13 person that results when a peace officer orders the person
14 to remain in his presence.

15 ~~(62)~~ (61) "Tamper" means to interfere with something
16 improperly, meddle with it, make unwarranted alterations in
17 its existing condition, or deposit refuse upon it.

18 ~~(63)~~ (62) "Threat" means a menace, however communicated,
19 to:

20 (a) inflict physical harm on the person threatened or
21 any other person or on property; ~~or~~

22 (b) subject any person to physical confinement or
23 restraint; ~~or~~

24 (c) commit any criminal offense; ~~or~~

25 (d) accuse any person of criminal offense; ~~or~~

1 (e) expose any person to hatred, contempt, or
2 ridicule; ~~or~~

3 (f) harm the credit or business repute of any person;
4 ~~or~~

5 (g) reveal any information sought to be concealed by
6 the person threatened; ~~or~~

7 (h) take action as an official against anyone or
8 anything, ~~or~~ withhold official action, or cause such action
9 or withholding; ~~or~~

10 (i) bring about or continue a strike, boycott, or
11 other similar collective action if the property is not
12 demanded or received for the benefit of the groups which he
13 purports to represent; or

14 (j) testify or provide information or withhold
15 testimony or information with respect to another's legal
16 claim or defense.

17 ~~(64)~~ (63) (a) "Value" means the market value of the
18 property at the time and place of the crime, or, if such
19 cannot be satisfactorily ascertained, the cost of the
20 replacement of the property within a reasonable time after
21 the crime. If the offender appropriates a portion of the
22 value of the property, the value shall be determined as
23 follows:

24 (i) The value of an instrument constituting an
25 evidence of debt, such as a check, draft, or promissory

1 note, shall be deemed the amount due or collectible thereon
2 or thereby, such figure ordinarily being the face amount of
3 the indebtedness less any portion thereof which has been
4 satisfied.

5 (ii) The value of any other instrument which creates,
6 releases, discharges, or otherwise affects any valuable
7 legal right, privilege, or obligation shall be deemed the
8 amount of economic loss which the owner of the instrument
9 might reasonably suffer by virtue of the loss of the
10 instrument.

11 (b) When it cannot be determined if the value of the
12 property is more or less than ~~one hundred fifty dollars~~
13 ~~(\$150)~~ by the standards set forth in subsection ~~(64)~~ (a)
14 (63) above, its value shall be deemed to be an amount
15 less than ~~one hundred fifty dollars~~ ~~(\$150)~~.

16 (c) Amounts involved in thefts committed pursuant to a
17 common scheme or the same transaction, whether from the same
18 person or several persons, may be aggregated in determining
19 the value of the property.

20 ~~(65)~~ (64) "Vehicle" means any device for transportation
21 by land, water, or air, or mobile equipment with provision
22 for transport of an operator.

23 ~~(66)~~ (65) "Weapon" means any instrument, article, or
24 substance which, regardless of its primary function, is
25 readily capable of being used to produce death or serious

1 bodily injury.

2 ~~(67)~~ (66) "Witness" means a person whose testimony is
3 desired in any official proceeding, ~~or~~ in any investigation
4 by a grand jury, or in a criminal action, prosecution, or
5 proceeding."

6 Section 11. Section 94-2-103, R.C.M. 1947, is amended
7 to read as follows:

8 "94-2-103. General requirements of criminal act and
9 mental state. (1) A person is not guilty of an offense,
10 other than an offense which involves absolute liability,
11 unless, with respect to each element described by the
12 statute defining the offense, he acts while having one ~~(1)~~
13 of the mental states described in ~~sections 94-2-101-(23),~~
14 ~~94-2-101(32) and 94-2-101-(53) subsections (27), (31), and~~
15 ~~(52) of 94-2-101.~~

16 (2) If the statute defining an offense ~~prescribed~~
17 prescribes a particular mental state with respect to the
18 offense as a whole, without distinguishing among the
19 elements thereof, the prescribed mental state applies to
20 each such element.

21 (3) Knowledge that certain conduct constitutes an
22 offense, or knowledge of the existence, meaning, or
23 application of the statute defining an offense, is not an
24 element of the offense unless the statute clearly defines it
25 as such.

1 (4) A person's reasonable belief that his conduct does
2 not constitute an offense is a defense if:

3 (a) the offense is defined by an administrative
4 regulation or order which is not known to him and has not
5 been published or otherwise made reasonably available to
6 him, and he could not have acquired such knowledge by the
7 exercise of due diligence pursuant to facts known to him; ~~or~~

8 (b) he acts in reliance upon a statute which later is
9 determined to be invalid; ~~or~~

10 (c) he acts in reliance upon an order or opinion of
11 the Montana supreme court or a United States appellate court
12 later overruled or reversed; or

13 (d) he acts in reliance upon an official
14 interpretation of the statute, regulation, or order defining
15 the offense, made by a public officer or agency legally
16 authorized to interpret such statute.

17 (5) If a person's reasonable belief is a defense under
18 subsection (4) ~~of this section~~, nevertheless he may be
19 convicted of an included offense of which he would be guilty
20 if the law were as he believed it to be.

21 (6) Any defense based upon this section is an
22 affirmative defense."

23 Section 12. Section 94-2-104, R.C.M. 1947, is amended
24 to read as follows:

25 "94-2-104. Absolute liability. A person may be guilty

of an offense without having, as to each element thereof, one of the mental states described in ~~94-2-101 (28), 94-2-101(32) and 94-2-101(53)~~ subsections (27), (31), and (52) of 94-2-101 only if the offense is punishable by a fine not exceeding ~~five hundred dollars (\$500)~~, and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described."

Section 13. Section 94-2-111, R.C.M. 1947, is amended to read as follows:

"94-2-111. Consent as a defense. (1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; ~~or~~

(b) ~~it is given by a person who~~ by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; ~~or~~

(c) it is induced by force, duress, or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to."

Section 14. Section 94-5-105, R.C.M. 1947, is amended to read as follows:

"94-5-105. Sentence of death for deliberate homicide. (1) ~~When~~ Unless there are mitigating circumstances, when a defendant is convicted of the offense of deliberate homicide, the court shall impose a sentence of death in any of the following circumstances, ~~unless there are mitigating circumstances:~~

(a) The deliberate homicide was committed by a person serving a sentence of imprisonment in the state prison; ~~or~~

(b) The defendant was previously convicted of another deliberate homicide; ~~or~~

(c) The deliberate homicide was committed by means of torture; ~~or~~

(d) The deliberate homicide was committed by a person lying in wait or ambush; ~~or~~

(e) The deliberate homicide was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(2) ~~Notwithstanding~~ Notwithstanding the provisions of subsection (1) and regardless of circumstances, when a defendant is convicted of the offense of deliberate homicide under subsection (1) (a) of ~~section 94-5-102 in which~~ and the victim was a peace officer killed while performing his duty, the court shall impose a sentence of death."

Section 15. Section 94-5-501, R.C.M. 1947, is amended to read as follows:

1 "94-5-501. Definitions. ~~(1) In this part, unless a~~
 2 ~~different meaning plainly is required, the definitions given~~
 3 ~~in chapter 2, 94-2-101 apply.~~

4 ~~(2)~~ As used in sections 94-5-503 and 94-5-505, the
 5 term "without consent" means:

6 ~~(a)~~ (1) the victim is compelled to submit by force or
 7 by threat of imminent death, bodily injury, or kidnapping
 8 kidnapping to be inflicted on anyone; or

9 ~~(b)~~ (2) the victim is incapable of consent because he
 10 is:

11 ~~(i)~~ (a) mentally defective or incapacitated; or

12 ~~(ii)~~ (b) physically helpless; or

13 ~~(iii)~~ (c) less than sixteen ~~(16)~~ years old."

14 Section 16. Section 94-5-503, R.C.M. 1947, is amended
 15 to read as follows:

16 "94-5-503. Sexual intercourse without consent. (1) A
 17 person who knowingly has sexual intercourse without consent
 18 with a person of the opposite sex not his spouse commits the
 19 offense of sexual intercourse without consent.

20 (2) A person convicted of sexual intercourse without
 21 consent shall be imprisoned in the state prison for any term
 22 not to exceed twenty ~~(20)~~ years.

23 (3) If the victim is less than sixteen ~~(16)~~ years old
 24 and the offender is three ~~(3)~~ or more years older than the
 25 victim, or if the offender inflicts bodily injury upon

1 anyone in the course of committing sexual intercourse
 2 without consent, he shall be imprisoned in the state prison
 3 for any term not to exceed forty ~~(40)~~ years.

4 (4) An act "in the course of committing sexual
 5 intercourse without consent" shall include an attempt to
 6 commit the offense or flight after the attempt or
 7 commission.

8 (5) No evidence concerning the sexual conduct of the
 9 victim is admissible in prosecutions under this section,
 10 except:

11 (a) ~~Evidence~~ evidence of the victim's past sexual
 12 conduct with the offender;

13 (b) ~~Evidence~~ evidence of specific instances of the
 14 victim's sexual activity to show the origin of semen,
 15 pregnancy, or disease which is at issue in the prosecution
 16 under this section.

17 ~~(6)~~ If the defendant proposes, for any purpose, to
 18 offer evidence described in subsection (5)(a) or (b), the
 19 trial judge shall order a hearing out of the presence of the
 20 jury to determine whether the proposed evidence is
 21 admissible under this subsection (5).

22 ~~(6)~~ (7) If the issue of failure to make a timely
 23 complaint or immediate outcry is raised, the jury shall be
 24 informed that such fact, standing alone, may not bar
 25 conviction."

1 Section 17. Section 94-5-506, R.C.M. 1947, is amended
2 to read as follows:

3 "94-5-506. Provisions generally applicable to sexual
4 crimes ~~{94-5-504 to 94-5-505}~~. (1) When criminality depends
5 on the victim being less than ~~sixteen~~ {16} years old, it is
6 a defense for the offender to prove that he reasonably
7 believed the child to be above that age. Such belief shall
8 not be deemed reasonable if the child is less than ~~fourteen~~
9 {14} years old.

10 (2) Whenever the definition of an offense excludes
11 conduct with a spouse, the ~~extension~~ exclusion shall be
12 deemed to extend to persons living as ~~an~~ husband and wife,
13 regardless of the legal status of their relationship. The
14 exclusion shall be inoperative as respects spouses living
15 apart under a decree of judicial separation. Where the
16 definition of an offense excludes conduct with a spouse,
17 this shall not preclude conviction of a spouse in a sexual
18 act which he or she causes another person, not within the
19 exclusion, to perform.

20 (3) In a prosecution under the preceding sections on
21 sexual crimes (94-5-502 ~~to through~~ 94-5-504) in which the
22 victim's lack of consent is based solely upon his incapacity
23 to consent because he was mentally incapacitated, it is a
24 defense to such prosecution that the victim was a voluntary
25 social companion of the defendant, and the intoxicating

1 substance was voluntarily and knowingly taken."

2 Section 18. Section 94-5-607, R.C.M. 1947, is amended
3 to read as follows:

4 "94-5-607. Endangering the welfare of children. (1) A
5 parent, guardian, or other person supervising the welfare of
6 a child less than ~~sixteen~~ {16} years old commits the offense
7 of endangering the welfare of children if he knowingly
8 endangers the child's welfare by violating a duty of care,
9 protection, or support.

10 (2) A parent, guardian, or other person commits the
11 offense of endangering the welfare of children if he
12 knowingly contributes to the delinquency of a ~~youth~~ child
13 less than 16 years old by:

14 (a) supplying or encouraging the use of intoxicating
15 substances by ~~a~~ the child; or

16 (b) assisting, promoting, or encouraging ~~a~~ the child
17 to leave or abandon his place of residence without the
18 consent of his parents or guardian, to enter a place of
19 prostitution, to engage in sexual conduct, or to enter
20 places exclusively for adults.

21 (3) A person convicted of endangering the welfare of
22 children shall be fined not to exceed ~~five hundred dollars~~
23 ~~{500}~~ or be imprisoned in the county jail for any term not
24 to exceed ~~six~~ {6} months, or both. A person convicted of a
25 second offense of endangering the welfare of children shall

be fined not to exceed ~~one-thousand-dollars-(\$1,000)~~ or be imprisoned in the county jail for any term not to exceed ~~six~~ ~~(6)~~ months, or both.

(4) ~~Evidence.~~ On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, ~~shall be is~~ admissible: cruel treatment,; abuse,; infliction of unnecessary and cruel punishment,; abandonment,; neglect,; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(5) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering ~~the~~ welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered."

Section 19. Section 94-5-608, R.C.M. 1947, is amended to read as follows:

"94-5-608. Nonsupport. (1) A person commits the offense of nonsupport if he fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child, or other dependent.

(2) A person commits the offense of aggravated nonsupport if:

(a) the offender has left the state to avoid the duty of support; or

(b) the offender has been previously convicted of the offense of nonsupport.

(3) A person convicted of nonsupport shall be fined not to exceed ~~five-hundred-dollars-(\$500)~~ or be imprisoned in the county jail for any term not to exceed ~~six~~ ~~(6)~~ months, or both. A person convicted of aggravated nonsupport shall be imprisoned in the state prison for any term not to exceed ~~ten~~ ~~(10)~~ years.

(4) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person ~~or persons~~ that the defendant has failed to support."

Section 20. Section 94-5-618, R.C.M. 1947, is amended to read as follows:

"94-5-618. Control of practice of abortion. (1) No abortion may be performed within the state of Montana:

(a) ~~Except~~ except by a licensed physician,;

(b) ~~After~~ after the first ~~three~~ 3 months of pregnancy, except in a hospital licensed by the department,;

(c) ~~After~~ after viability of the fetus, unless in appropriate medical judgment, the abortion is necessary to preserve the life or health of the mother. An abortion under this subsection (1)(c) may only be performed if:

(i) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by him,

1 setting forth in detail the facts upon which he relies in
2 making such judgment; and

3 (ii) two other licensed physicians have first examined
4 the patient and concurred in writing with such judgment. The
5 foregoing certification and concurrence is not required if a
6 licensed physician certifies the abortion is necessary to
7 preserve the life of the mother.

8 (2) The timing and procedure used in performing an
9 abortion under subsection (1) (c) of this section must be
10 such that the viability of the fetus is not intentionally or
11 negligently endangered, as the term "negligently" is defined
12 in ~~section 94-2-101-32~~ (31). The fetus may be intentionally
13 endangered or destroyed only if necessary to preserve the
14 life or health of the mother.

15 (3) No physician, facility, or other person or agency
16 shall engage in solicitation, advertising, or other form of
17 communication having the purpose of inviting, inducing, or
18 attracting any person to come to such physician, facility,
19 or other person or agency to have an abortion or to purchase
20 abortifacients.

21 (4) Violation of subsections (1) and (2) of this
22 section is a felony. Violation of subsection (3) of this
23 section is a misdemeanor."

24 Section 21. Section 94-6-201, R.C.M. 1947, is amended
25 to read as follows:

1 "94-6-201. ~~Definitions~~ Definition. (1) "Enter or
2 remain unlawfully". A person enters or remains unlawfully in
3 or upon any vehicle, ~~or~~ occupied structure, or premises when
4 he is not licensed, invited, or otherwise privileged to do
5 so. A person who enters or remains upon land does so with
6 privilege unless notice is personally communicated to him by
7 an authorized person, or unless such notice is given by
8 posting in a conspicuous manner.

9 (2) In no event shall civil liability be imposed upon
10 the owner or occupier of premises by reason of any privilege
11 created by this ~~action~~ section."

12 Section 22. Section 94-6-307, R.C.M. 1947, is amended
13 to read as follows:

14 "94-6-307. Deceptive practices. (1) A person commits
15 the offense of deceptive practices when he purposely or
16 knowingly:

17 (a) causes another, by deception or threat, to execute
18 a document disposing of property or a document by which a
19 pecuniary obligation is incurred; ~~or~~

20 (b) makes or directs another to make a false or
21 deceptive statement addressed to the public or any person
22 for the purpose of promoting or procuring the sale of
23 property or services; ~~or~~

24 (c) makes, ~~or~~ directs another to make, or knowingly
25 accepts a false or deceptive statement to any person

1 respecting his financial condition for the purpose of
2 procuring a loan or credit; or

3 (d) obtains, or attempts to obtain property, labor, or
4 services by any of the following means:

5 (i) ~~Using~~ using a credit card which was issued to
6 another, without the other's consent;

7 (ii) ~~Using~~ using a credit card that has been revoked or
8 canceled;

9 (iii) ~~Using~~ using a credit card that has been falsely
10 made, counterfeited, or altered in any material respect;

11 (iv) ~~Using~~ using the pretended number or description of
12 a fictitious credit card;

13 (v) ~~Using~~ using a credit card which has expired
14 provided that the credit card clearly indicates the
15 expiration date.

16 (2) A person convicted of the offense of deceptive
17 practices shall be fined not to exceed ~~five hundred dollars~~
18 ~~(\$500)~~ or be imprisoned in the county jail for ~~any~~ a term
19 not to exceed ~~six~~ (6) months, or both. If the deceptive
20 practices are part of a common scheme or the value of any
21 property, labor, or services obtained, or attempted to be
22 obtained exceeds ~~one hundred fifty dollars (\$150)~~, then the
23 offender shall be imprisoned in the state prison for ~~any~~ a
24 term not to exceed ~~ten~~ (10) years.

25 Section 23. Section 94-6-308.1, is amended to read as

1 follows:

2 "94-6-308.1. Chain distributor schemes. (1) As used in
3 this ~~act~~ [section]:

4 (a) "~~Person~~ person" means a natural person,
5 corporation, partnership, trust, or other entity; and in the
6 case of an entity it shall include any other entity which
7 has a majority interest in such entity or effectively
8 controls such other entity as well as the individual
9 officers, directors, and other persons in act of control of
10 the activities of each entity;

11 (b) "Chain chain distributor scheme" means a sales
12 device whereby a person, under a condition that he make an
13 investment, is granted a license or right to recruit for
14 consideration one or more additional persons who are also
15 granted such license or right upon condition of making an
16 investment, and may further perpetuate the chain of persons
17 who are granted such license or right upon such condition.

18 (2) It is unlawful for any person to promote, sell, or
19 encourage participation in any chain distributor scheme.

20 (3) Any person violating the provisions of this ~~act~~
21 [section] shall, ~~be deemed guilty of a felony and~~ upon
22 conviction, shall be imprisoned in the state prison for a
23 period not to exceed ~~one~~ (1) year, or ~~punishable by a fine~~
24 fined not to exceed ~~one thousand dollars (\$1,000)~~, or both
25 ~~such fine and imprisonment.~~

1 outcome on the basis of considerations other than those
2 authorized by law it is no defense to prosecution under
3 this section that a person who has been the offender sought
4 influence was not qualified to act in the desired way
5 whether because he had not yet assumed office or lacked
6 jurisdiction or for any other reason;
7 (e) as a juror or officer in charge of a jury
8 receives or permits to be received any communication
9 relating to any matter pending before such jury, except
10 according to the regular course of proceedings.
11 (2) It is no defense to prosecution under subsections
12 (1)(a) through (1)(d) that a person whom the offender sought
13 to influence was not qualified to act in the desired way,
14 whether because he had not yet assumed office or lacked
15 jurisdiction or for any other reason.
16 (2)(3) A person convicted under this section shall be
17 fined not to exceed five hundred dollars (\$500) or be
18 imprisoned in the county jail for any term not to exceed six
19 months, or both, unless the offender threatened to
20 commit an offense or made a threat with the purpose to
21 influence a judicial or administrative proceeding, in which
22 case the offender shall be imprisoned in the state prison
23 for any term not to exceed ten years.
24 Section 25. Section 94-7-104, R.C.M. 1947, is amended
25 to read as follows:

1 (4) Any person convicted of a second offense under
2 this section shall be imprisoned in the state prison
3 for a period not to exceed five (5) years or punishable by a
4 fine not to exceed five thousand dollars (\$5,000) or
5 both such fine and imprisonment.
6 Section 24. Section 94-7-103, R.C.M. 1947, is amended
7 to read as follows:
8 "94-7-103. Threats and other improper influence in
9 official and political matters. (1) A person commits an
10 offense under this section if he purposely or knowingly:
11 (a) threatens unlawful harm to any person with the
12 purpose to influence his decision, opinion, recommendation,
13 vote, or other exercise of discretion as a public servant,
14 party official, or voter; or
15 (b) threatens harm to any public servant with the
16 purpose to influence his decision, opinion, recommendation,
17 vote, or other exercise of discretion in a judicial or
18 administrative proceeding; or
19 (c) threatens harm to any public servant or party
20 official with the purpose to influence him to violate his
21 duty; or
22 (d) privately addresses to any public servant who has
23 or will have an official discretion in a judicial or
24 administrative proceeding any representation, entreaty,
25 argument, or other communication designed to influence the

"94-7-104. Compensation for past official behavior.

(1) A person commits an offense under this section if he knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another, ~~or~~ for having otherwise exercised a discretion in ~~his~~ another's favor, or for having violated his duty. A person commits an offense under this section if he knowingly offers, confers, or agrees to confer compensation, ~~acceptance of~~ which is prohibited by this section.

(2) A person convicted under this section shall be fined not to exceed ~~five hundred dollars--(\$500)~~ or be imprisoned in the county jail for any term not to exceed ~~six~~ ~~{6}~~ months, or both."

Section 26. Section 94-7-207, R.C.M. 1947, is amended to read as follows:

"94-7-207. Tampering with witnesses and informants.

(1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely; ~~or~~

(b) withhold any testimony, information, document, or

thing; ~~or~~

(c) elude legal process summoning him to testify or supply evidence ~~evidence~~; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed ~~ten--(10)~~ years."

Section 27. Section 94-7-307, R.C.M. 1947, is amended to read as follows:

"94-7-307. Transferring illegal articles or unauthorized communication. (1) ~~Transferring--Illegal Articles.~~ (a) A person commits the offense of transferring illegal articles if he knowingly or purposely transfers any illegal article or thing to a person subject to official detention or is transferred any illegal article or thing by a person subject to official detention.

(b) A person convicted of transferring illegal articles shall be:

(i) imprisoned in the state prison for a term not to exceed ~~twenty--(20)~~ years, if he conveys a weapon to a person subject to official detention; or

(ii) fined not to exceed ~~one hundred dollars--(\$100)~~ ~~if he conveys any other article or thing to a person subject to official detention~~ or be imprisoned in the county jail for

any term not to exceed ~~ten~~ (10) days, or both, if he conveys any other illegal article or thing to a person subject to official detention.

(c) ~~This shall~~ Subsection (1)(b)(ii) does not apply unless the offender knew or was given sufficient notice so that he reasonably should have known that the article or thing he conveyed was an illegal article.

~~(2) Unauthorized Communication.~~

(2) (a) A person commits the offense of unauthorized communication if he knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of such official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined not to exceed ~~one hundred dollars~~ (\$100) or be imprisoned in the county jail for any term not to exceed ~~ten~~ (10) days, or both."

Section 28. Section 94-7-503, R.C.M. 1947, is amended to read as follows:

"94-7-503. Criminal syndicalism. (1) "Criminal syndicalism" means the advocacy of crime, or malicious damage or injury to property, or violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

(2) A person commits the offense of criminal syndicalism if he purposely or knowingly:

(a) orally or by means of writing, advocates or promotes the doctrine of criminal syndicalism; or

(b) organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(c) for or on behalf of another ~~who purposely thereby~~ whose purpose is to advocate or promote the doctrine of criminal syndicalism, distributes, sells, publishes, or publicly displays, any writing advocating or advertising such doctrine.

(3) A person convicted of the offense of criminal syndicalism shall be imprisoned in the state prison for a term not to exceed ~~ten~~ (10) years.

(4) Whoever, being the owner or in possession or control of any premises, knowingly permits any assemblage of persons to use such ~~premise~~ premises for the purpose of advocating or promoting the doctrine of criminal syndicalism shall be fined not to exceed ~~five hundred dollars~~ (\$500) or be imprisoned in the county jail for a term not to exceed ~~six~~ (6) months, or both."

Section 29. Section 94-8-107, R.C.M. 1947, is amended to read as follows:

"94-8-107. Public nuisance. (1) "Public nuisance" means:

(a) a condition which endangers safety or health, is

1 offensive to the senses, or obstructs the free use of
2 property, so as to interfere with the comfortable enjoyment
3 of life or property by an entire community or neighborhood,
4 or by any considerable number of persons; ~~or~~

5 (b) any premises where persons gather for the purpose
6 of engaging in unlawful conduct; or

7 (c) a condition which renders dangerous for passage,
8 any public highway or ~~right-of-way~~, right-of-way or waters
9 used by the public.

10 (2) A person commits the offense of maintaining a
11 public nuisance if he knowingly creates, conducts, or
12 maintains a public nuisance.

13 (3) Any act which affects an entire community or
14 neighborhood, or any considerable number of persons (as
15 specified in subsection (1) (a) ~~of this section~~), is no less
16 a nuisance because the extent of the annoyance or damage
17 inflicted upon individuals is unequal.

18 (4) A person convicted of maintaining a public
19 nuisance shall be fined not to exceed ~~five hundred dollars~~
20 ~~(\$500)~~ or be imprisoned in the county jail for a term not to
21 exceed ~~six--(6)~~ months, or both. Each day of such conduct
22 constitutes a separate offense.

23 (5) Action to abate a public nuisance.

24 (a) Every ~~premise upon which~~ a public nuisance is
25 ~~being maintained~~ may be abated, and the persons maintaining

1 such nuisance and the possessor of the premises who permits
2 the same to be maintained may be enjoined from such conduct
3 by an action in equity in the name of the state of Montana
4 by the county attorney, or any resident of the state.

5 (b) Upon the filing of the complaint in such action
6 the judge may issue a temporary injunction.

7 (c) In such action evidence of the general reputation
8 of the premises ~~shall be~~ is admissible for the purpose of
9 proving the existence of ~~such the~~ nuisance.

10 (d) If the existence of the nuisance ~~be~~ is
11 established, an order of abatement shall be entered as part
12 of the judgment in the case. The judge issuing ~~such the~~
13 order may, in his discretion:

14 (i) confiscate all fixtures used on the premises to
15 maintain the nuisance and either sell them and transmit the
16 proceeds to the county general fund, ~~or~~ destroy them, or
17 return them to their rightful ownership; ~~or~~

18 (ii) close the premises for any period not to exceed
19 ~~one--(1)~~ year, and during ~~such~~ which period the premises
20 shall remain in the custody of the court; ~~or~~

21 (iii) allow the premises to be opened upon posting bond
22 sufficient in amount to assure compliance with the order of
23 abatement. The bond shall be forfeited if the nuisance is
24 continued or resumed. The procedure for forfeiture ~~and/or~~
25 discharge of the bond shall be as provided in ~~section~~

95-1116-~~i~~ OF

(iv) any combination of the above."

Section 30. Section 94-8-108, R.C.M. 1947, is amended to read as follows:

"94-8-108. Creating a hazard. (1) A person commits the offense of creating a hazard if he knowingly:

(a) discards in any place where it might attract children, a container having a compartment of more than ~~one~~ and ~~one-half~~ ~~(1 1/2)~~ cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot easily be opened from the inside, and fails to remove the door, lid, or locking or fastening device; ~~or~~

(b) being the owner ~~of~~ or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft, or other hole of a depth of ~~four~~ ~~(4)~~ feet or more and a top width of ~~twelve~~ ~~(12)~~ inches or more, and ~~he~~ fails to cover or fence it with a suitable protective construction; ~~or~~

(c) tampers with an aircraft without the consent of the owner; ~~or~~

(d) being the owner or otherwise ~~have~~ having possession of property upon which there is a steam engine or steam boiler, ~~he~~ continues to use a steam engine or steam boiler which is in an unsafe condition; ~~or~~

(e) being a person in the act of game hunting, ~~he~~ acts

in a negligent manner or knowingly fails to give all reasonable assistance to any person whom he has injured; or
(f) deposits any hard substance upon or between any railroad tracks, which will tend to derail railroad cars or other vehicles.

(2) A person convicted of the offense of creating a hazard shall be fined not to exceed ~~five hundred dollars~~ ~~(\$500)~~ or be imprisoned in the county jail for a term not to exceed ~~six~~ ~~(6)~~ months, or both."

Section 31. Section 94-8-110.2, R.C.M. 1947, is amended to read as follows:

"94-8-110.2. Contraceptive Sale and advertisement of contraceptive drugs ~~or~~ and devices. (1) It ~~shall be~~ is unlawful for any person, firm, corporation, ~~or partnership~~ partnership, or association to sell, offer for sale, or give away, ~~through the medium~~ by means of vending machines, personal or collective distribution, ~~by~~ solicitation, or peddling or in any other manner whatsoever, contraceptive drugs or devices, prophylactic rubber goods, or other articles for the prevention of venereal diseases. ~~The foregoing provisions shall~~ This subsection does not apply to regularly licensed practitioners of medicine, or osteopathy, ~~or~~ other licensed persons practicing other healing arts, and registered pharmacists, ~~as to~~ or wholesale drug jobbers or manufacturers who sell to retail stores only.

(2) It ~~shall be~~ is unlawful to:

(a) exhibit or display prophylactics or contraceptives in any show window, upon the streets, or in any public place, other than in the place of business of a licensed pharmacist; or

(b) ~~to~~ advertise such in any magazine, newspaper, or other form of publication, originating in, or published within the state of Montana;

(c) ~~to~~ publish, or distribute from house to house or upon the streets, any circular, booklet, or other form of advertising, of prophylactics or contraceptives; or

(d) advertise such by other visual means, ~~or by~~ auditory method, or by radio broadcast, or by the use of outside signs on stores, billboards, window displays, or other advertising visible to persons upon the streets or public highways, ~~provided, however, that~~

(3) ~~nothing~~ Nothing in this ~~act shall prevent~~ section prevents the advertising of prophylactics or contraceptives in the trade press, of those magazines whose principal circulation is to the medical and pharmaceutical professions, or ~~to~~ those magazines and other publications having interstate circulation, or originating outside of the state of Montana where the advertising does not violate any United States law or federal postal regulation.

(4) ~~or to~~ Nothing in this section prevents the

furnishing within the store or place of business of a licensed pharmacist, to persons qualified to purchase, and then only upon their inquiry, such printed or other information as ~~is~~ is requisite to proper use in relation to any merchandise coming within the provisions of this ~~act~~ section.

(5) ~~Provided, nothing herein shall prevent~~ Nothing in this section prevents the dissemination of medically acceptable contraceptive information by printed or other methods concerning the availability and use of any merchandise coming within the provisions of this ~~act~~ section.

(3)-(6) Any officer of the law ~~shall have the power to~~ may cause the arrest of any a person violating any provision of this ~~act~~ section, to seize stocks illegally held, and ~~to make seizure of~~ seize any mechanical device or vending machine containing any merchandise coming within the provisions of this ~~act~~ section, holding the owner of ~~such~~ the machine, and the occupier and the owner of the premises where seizure is made to be in violation of this ~~act~~ section.

(4)-(7) Any person, ~~or~~ any member of a firm, or ~~partnership~~ partnership, or the officers of a corporation or association who ~~or which~~ knowingly violates violates any of the provisions of this ~~act shall be~~ section are guilty of

a misdemeanor, and shall, upon conviction, be punished by a fine not to exceed ~~five hundred dollars (\$500)~~, or by imprisonment of not to exceed ~~six~~ (6) months in the county jail, or both, ~~it provided, however, that the~~

(8) ~~justice~~ Justice of the peace courts and the district courts of the state ~~shall~~ have concurrent jurisdiction in all prosecutions and causes arising under this ~~act~~ section."

Section 32. Section 94-8-111, R.C.M. 1947, is amended to read as follows:

"94-8-111. Criminal defamation. (1) Defamatory matter is anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society, or causes injury to his or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means, communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than ~~six~~ (6) months in the county jail or a fine of not more than ~~five hundred dollars (\$500)~~, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true and is communicated with good motives and for justifiable ends; ~~or~~

(b) the communication is absolutely privileged; ~~or~~

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern; ~~or~~

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further such interest or duty.

(4) No person ~~shall~~ may be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two ~~(2)~~ other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty."

Section 33. Section 94-8-114, R.C.M. 1947, is amended to read as follows:

"94-8-114. Privacy in communications. (1) A person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) ~~Communicates with any person by telephone~~ with the intent purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with any person by telephone ~~or use~~ and uses any obscene, lewd, or profane language, ~~or~~

1 suggest ~~suggests~~ any lewd or lascivious act, or threatens
 2 ~~threatens~~ to inflict injury or physical harm to the person
 3 or property of any person, ~~(the use of obscene, lewd, or~~
 4 ~~profane language or the making of a threat or lewd or~~
 5 ~~lascivious suggestions is prima facie evidence of an intent~~
 6 ~~to terrify, intimidate, threaten, harass, annoy, or offend);~~

7 (b) ~~uses~~ uses a telephone to attempt to extort money
 8 or any other thing of value from any person, or to disturb
 9 by repeated telephone calls the peace, quiet, or right of
 10 privacy of any person at the place where the telephone call
 11 or calls were ~~are~~ received; ~~The use of obscene, lewd, or~~
 12 ~~profane language or the making of a threat or lewd or~~
 13 ~~lascivious suggestions shall be prima facie evidence of an~~
 14 ~~intent to terrify, intimidate, threaten, harass, annoy, or~~
 15 ~~offend.~~

16 (c) Records ~~records~~ or causes to be recorded ~~any~~
 17 ~~conversation~~ by use of ~~any a~~ hidden electronic or mechanical
 18 device which reproduces a human conversation without the
 19 knowledge of all parties to the conversation. Subsection (c)
 20 ~~shall does~~ not apply to duly elected or appointed public
 21 officials or employees when ~~such the~~ transcription or
 22 recording is done in the performance of official duty, ~~or~~
 23 to persons speaking at public meetings, or ~~to~~ persons given
 24 warning of ~~such the~~ recording;

25 (d) Attempts by means of any machine, instrument, or

1 contrivance, or in any other manner;

2 (ii) reads, or attempts to read ~~any other manner~~
 3 ~~reads, or attempts to read~~ any message or learn the contents
 4 thereof, while ~~the same~~ it is being sent over ~~any a~~
 5 telegraph line;

6 (iii) ~~or~~ learns or attempts to learn the contents of any
 7 message, ~~whilst the same~~ while it is in ~~any a~~ telegraph
 8 office or is being received thereat or sent therefrom; or

9 (iii) ~~who~~ uses, ~~or~~ attempts to use, or ~~communicate~~
 10 ~~communicates~~ to others, any information so obtained;

11 (e) ~~Discloses~~ discloses the contents of a telegraphic
 12 message or any part thereof, addressed to another person
 13 without the permission of such person, unless directed to do
 14 so by the lawful order of a court; or

15 (f) ~~Opens~~ opens or reads or causes to be read any
 16 sealed letter not addressed to himself, without being
 17 authorized to do so by either the writer of ~~such the~~ letter
 18 or by the person to whom it is addressed, ~~and every person~~
 19 ~~who~~ or, without the like authority, publishes any of the
 20 contents of ~~such letters the letter~~ knowing the same to have
 21 been unlawfully opened.

22 (2) A person convicted of the offense of violating the
 23 privacy in communications shall be fined not to exceed ~~five~~
 24 ~~hundred dollars~~ ~~(\$500)~~ or be imprisoned in the county jail
 25 for a term not to exceed ~~six~~ ~~(6)~~ months, or both."

Section 34. Section 94-8-201, R.C.M. 1947, is amended to read as follows:

"94-8-201. ~~Machine guns definitions~~ Definitions. In 94-8-202 through 94-8-208 the following definitions apply:

(1) "Machine gun" ~~applies to and includes~~ means a weapon of any description by whatever name known, loaded or unloaded, from which more than six shots or bullets may be rapidly, ~~or~~ automatically, or semiautomatically discharged from a magazine, by a single function of the firing device.

(2) "Crime of violence" ~~applies to and includes~~ means any of the following crimes or an attempt to commit any of the same; ~~namely, murder, manslaughter, kidnapping, rape, mayhem, assault to do great bodily harm, any forcible felony, robbery, burglary, housebreaking, breaking and entering, and larceny and criminal trespass.~~

(3) "Person" ~~applies to and~~ includes a firm, partnership, association, or corporation."

Section 35. Section 94-8-202, R.C.M. 1947, is amended to read as follows:

"94-8-202. Possession or use of machine gun in connection with a crime when unlawful. Possession or use of a machine gun in the ~~perpetration~~ commission or attempted ~~perpetration~~ commission of a crime of violence is hereby ~~declared to be a crime~~ an offense punishable by imprisonment in the state ~~penitentiary prison~~ for a term of not less than

~~twenty 20 years or more than 50 years."~~

Section 36. Section 94-8-203, R.C.M. 1947, is amended to read as follows:

"94-8-203. ~~Punishment for possession~~ Possession or use of machine gun for an offensive purpose. Possession or use of a machine gun for an offensive or aggressive purpose is ~~hereby declared to be a crime~~ an offense punishable by imprisonment in the state ~~penitentiary prison~~ for a term of not less than ~~ten 10 years or more than 20 years."~~

Section 37. Section 94-8-204, R.C.M. 1947, is amended to read as follows:

"94-8-204. Presumption of ~~possession or use for~~ offensive or aggressive purpose. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(a) (1) ~~When~~ when the machine gun is on premises not owned or rented, for bona fide permanent residence or business occupancy, by the person in whose possession the machine gun may be found; ~~or~~

(b) (2) ~~When~~ when the machine gun is in the possession of, or used by, ~~an unnaturalized foreign born person, or a~~ person who has been convicted of a crime of violence in any court of record, state or federal, ~~of in~~ the United States of America, or its territories or insular possessions; ~~or~~

(c) (3) ~~When~~ when the machine gun is of the kind

1 described in section 94-8-208 and has not been registered as
2 ~~required in said that section required~~; or

3 ~~(d)(4) When when~~ empty or loaded pistol shells of 30
4 (.30 in. or 7.63 mm.) or larger caliber which have been or
5 are susceptible of use being used in the machine gun are
6 found in the immediate vicinity thereof."

7 Section 38. Section 94-8-210, R.C.M. 1947, is amended
8 to read as follows:

9 "94-8-210. Carrying certain concealed weapons in
10 cities or towns ~~Forbidden--punishment prohibited~~. Every
11 person who, within the limits of any city or town, carries
12 or bears concealed upon his person a dirk, dagger, pistol,
13 revolver, slingshot, ~~sword cane~~ sword cane, billy, knuckles
14 made of any metal or hard substance, knife having a blade
15 ~~four 1~~ inches long or longer, razor, not including a safety
16 razor, or other deadly weapon, shall be punished by a fine
17 not exceeding ~~five hundred dollars~~ \$500 or by imprisonment
18 in the county jail for a period not exceeding six 6 months,
19 or by both ~~such fine and imprisonment~~, or ~~may be punished~~ by
20 imprisonment in the state ~~penitentiary~~ prison for a period
21 not exceeding five 5 years."

22 Section 39. Section 94-8-212, R.C.M. 1947, is amended
23 to read as follows:

24 "94-8-212. ~~Carrying certain concealed weapons outside~~
25 ~~of cities or towns forbidden--punishment the excepted from~~

1 ~~as Exceptions. The preceding sections Sections 94-8-210~~
2 ~~and 94-8-211 shall do not apply to:~~

3 ~~1. A sheriff or his deputy;~~
4 ~~2. A marshal or his deputy;~~
5 ~~3. A constable or his deputy;~~
6 ~~4. A police officer or policeman;~~
7 ~~5. A United States marshal or his deputy;~~
8 ~~6. A person in the secret service of the United~~
9 ~~States;~~

10 ~~7. A game warden or his deputy;~~
11 ~~8. A U. S. forest reserve official or his deputy;~~

12 (1) any peace officer of the state of Montana;
13 (2) any officer of the United States government
14 authorized to carry a concealed weapon;

15 9. (3) A a person in actual service as a national
16 guardsman;

17 ~~10. A revenue officer or his deputy;~~
18 ~~11. A a person summoned to the aid of either any of~~
19 ~~the foregoing named persons named in subsections (1) through~~
20 ~~(3);~~

21 12. (5) A a civil officer or his deputy engaged in the
22 discharge of official business;

23 13. (6) A a person authorized by a judge of a district
24 court of this state to carry a weapon; or

25 14. (7) The the carrying of arms on one's own premises

or at ~~his one's~~ home or place of business.

~~45. Any peace officer of the state of Montana;~~

~~46. United States immigration and naturalization service officer;~~

~~47. National park service rangers.~~

Section 40. Section 94-8-214, R.C.M. 1947, is amended to read as follows:

"94-8-214. ~~Concealed weapons--district judge may issue permits to carry~~ Permits to carry concealed weapons -- records -- revocation. (1) Any judge of a district court of this state may grant permission to carry or bear, concealed or otherwise, a pistol or revolver for a term not exceeding one 1 year.

(2) All applications for such permission must be made by petition filed with the clerk of the district court. No charge may be made for the filing of which the petition ~~no charge shall be made.~~

(3) The applicant shall, if personally unknown to the judge, furnish proof by a credible witness of his good moral character and peaceable disposition.

(4) No such permission shall be granted any person who is not a citizen of the United States and who has not been an actual bona fide resident of the state of Montana for ~~six~~ 6 months immediately next preceding the date of such application.

(5) A record of permission granted shall be kept by the clerk of the court, ~~which~~ The record shall state the date of the application, the date of the permission, the name of the person to whom permission is granted, the name of the judge granting the permission, and the name of the person, if any, by whom good moral character and peaceable disposition are proved, ~~and which~~ The record must be signed by the person who is granted such permission.

(6) The clerk shall thereupon issue under his hand and the seal of the court a certificate, in a convenient card form so that the same may be carried in the pocket, stating:

"Permission to authorizing him to carry or bear, concealed or otherwise, a pistol or revolver for the period of from the date hereof, has been granted by, a judge of the district court of the judicial district of the state of Montana, in and for the county of

"Witness the hand of the clerk and the seal of said court this day of, 19...

....

Clerk."

(7) The date of the certificate shall be the date of the granting of such permission. The certificate shall bear upon its face the signature of the person receiving the same.

[8] Upon good cause shown the judge granting such permission may, and in his discretion without notice to the person receiving such permission, revoke the same, ~~the~~ The date of the revocation ~~being~~ shall be noted by the clerk upon the record kept by him.

[9] All permissions to carry or bear concealed weapons heretofore granted before March 3, 1919, are hereby revoked."

Section 41. Section 94-8-218, R.C.M. 1947, is amended to read as follows:

"94-8-218. Firing firearms. Every person who willfully shoots or fires off, a gun, pistol, or any other firearm, within the limits of any town or city, or of any private inclosure which contains a dwelling house, is punishable by a fine not exceeding ~~twenty-five dollars~~ \$25."

Section 42. Section 94-8-221, R.C.M. 1947, is amended to read as follows:

"94-8-221. ~~Firearms--use~~ Use of firearms by children under the age of fourteen years prohibited. It ~~shall be~~ is unlawful for any a parent, guardian, or other person, having the charge or custody of ~~any a~~ a minor child under the age of ~~fourteen~~ 14 years, to permit ~~such the~~ the minor child to carry or use in public any firearms of any description, loaded with powder and lead, ~~in public~~, except when ~~such the~~ the child is ~~in the company of such parent or guardian~~ accompanied by

a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor, who has been ~~duly~~ authorized by ~~such the~~ the parent or guardian."

Section 43. Section 3-228.3, R.C.M. 1947, is amended to read as follows:

"3-228.3. Suspension or revocation of license. (1) The department may, after notice and an opportunity for a hearing in accordance with the Montana Administrative Procedure Act ~~[92-4201 to 92-4225]~~ has have been afforded to the licensee, suspend or revoke a license if the licensee has failed to comply with this act or rules of the department, or if the licensee has:

(a) violated this act or section 3-229;

(b) been found guilty of ~~fraud, deceit, dishonesty, forgery, burglary, or larceny~~ theft, or any other offense defined in Title 24, Chapter 5, part 3;

(c) failed or refused to furnish information, records, or reports required by statute or rule.

(2) The department may, in accordance with the Montana Administrative Procedure Act, summarily suspend a license where the public health, safety, or welfare imperatively requires emergency action."

Section 44. Section 5-1040, R.C.M. 1947, is amended to read as follows:

"5-1040. Penalty for unlawful hypothecation of

property received. Any officer or employee of any bank doing business in this state, who, except in the manner authorized by law or the contract of the parties, hypothecates, pledges, or in any way alienates any notes, stocks, bonds, mortgages, securities, or any other property coming into his hands or into the possession of ~~said the~~ bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, ~~shall be~~ is guilty of ~~embezzlement, theft~~ and upon conviction thereof shall be punished as for other felonies."

Section 45. Section 5-1044, R.C.M. 1947, is amended to read as follows:

"5-1044. ~~Embezzlement~~ Theft of bank funds by officers or employees. Any banker, officer, director, or employee of any bank who ~~embezzles~~ fraudulently appropriates or abstracts or misapplies any of the moneys, funds, credits, or property of the bank when owned by it or held in trust, or ~~he~~ issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree, with intent, in any case to injure or defraud the bank or any person or corporation, or to deceive any officer of the bank, or any other person, or ~~any one~~ anyone appointed to examine the affairs of ~~such the~~ bank, or any person, who with like intent, aids or abets any officer,

clerk, or employee in the violation of this section, shall be ~~is~~ guilty of a ~~felony~~ theft and upon conviction thereof, shall be imprisoned in the state penitentiary prison for a period of not exceeding ~~twenty~~ (20) years."

Section 46. Section 11-1916, R.C.M. 1947, is amended to read as follows:

"11-1916. ~~Embezzlement of~~ Theft from funds. Any person who ~~shall embezzle~~ fraudulently appropriates any of the money or other valuable thing belonging to the disability and pension fund of any fire department relief association, or who ~~shall take~~ takes part, in, or in any manner ~~aid~~ aids in any scheme or plan whereby ~~said the~~ fund or association ~~shall be~~ is defrauded out of any of the money in ~~said the~~ fund, ~~shall be~~ is guilty of a ~~felony~~ theft and upon conviction thereof, shall be punished by imprisonment in the state prison for not less than ~~one~~ 1 year or more than ~~ten~~ 10 years."

Section 47. Section 14-631, R.C.M. 1947, is amended to read as follows:

"14-631. Duties of directors. ~~It shall be the duty of the~~ The directors to shall:

(1) act upon applications for membership, or to appoint one ~~(4)~~ or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of a membership officer's

1 approval or denial of membership shall be available to the
2 board of directors for inspection. A person denied
3 membership by a membership officer may appeal the denial to
4 the board.

5 (2) purchase a blanket fidelity bond, in accordance
6 with any rules and regulations of the director, to protect
7 the credit union against losses caused by occurrences
8 covered therein such as fraud, dishonesty, forgery,
9 embezzlement, theft, misappropriation, misapplication, or
10 unfaithful performance of duty by a director, officer,
11 employee, member of an official committee, ~~attorney-at-law~~
12 ~~attorney-at-law~~, or other agent;

13 (3) determine from time to time the interest rate or
14 rates consistent with this act, ~~which shall to~~ be charged on
15 loans and to authorize interest refunds, if any, to members
16 from income earned and received in proportion to the
17 interest paid by them on such classes of loans and under
18 such conditions as the board prescribes;

19 (4) fix from time to time the maximum amount which may
20 be loaned to any one member;

21 (5) declare dividends on shares in the manner and form
22 as provided in the bylaws;

23 (6) limit the number of shares which may be owned by a
24 member, such limitations to apply alike to all members;

25 (7) have charge of the investment of surplus funds,

1 except that the board of directors may designate an
2 investment committee or any qualified individual to have
3 charge of making investments under controls established by
4 the board of directors;

5 (8) authorize the employment of such persons necessary
6 to carry on the business of the credit union, including the
7 credit manager, loan officers, and auditing assistants
8 requested by the supervisory committee; and fix the
9 compensation, if any, of the treasurer and the general
10 manager and provide for compensation for other employees
11 within guidelines predetermined by the board of directors;

12 (9) authorize the conveyance of property;

13 (10) borrow or lend money to carry on the functions of
14 the credit union;

15 (11) designate a depository or depositories for the
16 funds of the credit union;

17 (12) suspend any or all members of the credit or
18 supervisory committee for failure to perform their duties;

19 (13) appoint any special committees ~~deemed~~ considered
20 necessary; and

21 (14) perform such other duties as the members from time
22 to time direct, and perform or authorize any action not
23 inconsistent with this act and not specifically reserved by
24 the bylaws for the members."

25 Section 48. Section 31-110, R.C.M. 1947, is amended to

1 read as follows:

2 "31-110. Offenses for which arrest may be made by
3 patrolmen ~~murder, etc.~~ ~~patrolmen~~ when patrolmen police
4 officers -- forbidden to act in labor disputes -- temporary
5 control of traffic in cities and towns -- investigations of
6 accidents -- inspection of livestock. (1) In addition to the
7 above duties, the highway patrol supervisor and all
8 patrolmen ~~are authorized under this act to may~~ make arrests
9 for the following offenses ~~committed~~, if committed in the
10 presence of ~~said~~ the supervisor or any of ~~said~~ the
11 patrolmen, ~~or~~; if committed in a rural district, upon the
12 request of a peace officer, ~~or~~ if committed in a city or
13 town of less than ~~twenty-five hundred~~ (2,500) inhabitants,
14 upon the request of any peace officer, or the mayor of ~~said~~
15 the city or town: ~~The crimes of murder deliberate homicide,~~
16 assault with a deadly weapon, arson, criminal mischief,
17 burglary, ~~larceny~~ theft, ~~kidnaping~~ kidnapping, illegal
18 transportation of narcotics, or violation of the Dyer ~~act~~
19 Act regarding the transportation of stolen automobiles.
20 ~~Provided, that such~~ Such highway patrolmen ~~shall~~ have no
21 authority and are expressly forbidden to make arrests in
22 labor disputes or ~~in preventing to prevent~~ violence in
23 connection with strikes, and ~~shall not be permitted to may~~
24 not perform any duties whatsoever in connection with labor
25 disputes, strikes, or boycotts.

1 (2) Patrolmen ~~shall be deemed~~ are considered police
2 officers ~~in for the purpose of~~ making arrests ~~in for~~ all
3 offenses occurring on the highways ~~and in or involving~~ the
4 use of motor vehicles or the registration thereof, and for
5 the purpose of serving warrants of arrest in connection with
6 such violations.

7 (3) ~~The patrolmen~~ Patrolmen ~~are also hereby empowered~~
8 ~~to may~~ stop any truck or motor vehicle in which livestock or
9 livestock products are being transported and ascertain
10 whether the driver of such truck or vehicle is rightfully in
11 possession of such livestock or livestock products, ~~and~~
12 ~~whenever~~ If the patrolmen have good reason to believe that
13 ~~such~~ livestock or livestock products have been stolen, they
14 ~~are empowered to may~~ take possession of the same until ~~seek~~
15 the livestock or livestock products can be delivered into
16 the custody of the sheriff or until such time as the facts
17 as to the actual ownership can be ascertained."

18 Section 49. Section 31-146, R.C.M. 1947, is amended to
19 read as follows:

20 "31-146. Mandatory revocation of license by board or
21 chief upon proper authority. The board or chief upon proper
22 authority shall ~~forthwith~~ revoke the license or operating
23 privilege of any operator or chauffeur upon receiving a
24 record of such operator's or chauffeur's conviction or
25 forfeiture of bail not vacated of any of the following

1 offenses, when such conviction or forfeiture has become
2 final:

3 ~~1-(1)~~ Masslaughter negligent homicide resulting from
4 the operation of a motor vehicle;

5 ~~2-(2)~~ Driving driving a motor vehicle while under the
6 influence of intoxicating liquor or narcotic drug, or
7 willfully or knowingly under the influence of any other drug
8 to a degree which renders him incapable of safely driving a
9 motor vehicle, or a combination thereof;

10 ~~3-(3)~~ Any any felony in the commission of which a
11 motor vehicle is used;

12 ~~4-(4)~~ Failure failure to stop and render aid as
13 required under the laws of this state in the event of a
14 motor vehicle accident resulting in the death or personal
15 injury of another;

16 ~~5-(5)~~ Perjury perjury or the making of a false
17 affidavit or statement under oath to the board under this
18 act or under any other law relating to the ownership or
19 operation of motor vehicles;

20 ~~6-(6)~~ Conviction conviction or forfeiture of bail not
21 vacated, upon three ~~(3)~~ charges of reckless driving
22 committed within a period of ~~twelve~~ (12) months."

23 Section 50. Section 31-177, R.C.M. 1947, is amended to
24 read as follows:

25 "31-177. Definitions. As used in this act, the

1 following definitions apply:

2 (1) "Habitual traffic offender" means any person, who,
3 within a ~~five~~ (5)-year 5-year period, from and after passage
4 of this act, accumulates ~~thirty~~ (30) or more conviction
5 points according to the schedule specified in this
6 subsection;

7 (a) ~~first or second degree murder~~ deliberate homicide
8 resulting from the operation of a motor vehicle, ~~fifteen~~
9 ~~(15)~~ points;

10 (b) ~~voluntary or involuntary manslaughter~~ mitigated
11 deliberate homicide or negligent homicide resulting from
12 operation of a motor vehicle, ~~twelve~~ (12) points;

13 (c) any offenses punishable as a felony under the
14 motor vehicle laws of Montana, or any felony in the
15 commission of which a motor vehicle is used, ~~twelve~~ (12)
16 points;

17 (d) driving while under the influence of intoxicating
18 liquor or narcotics or drugs of any kind, ~~ten~~ (10) points;

19 (e) operating a motor vehicle while his license to do
20 so has been suspended or revoked, ~~ten~~ (10) points;

21 (f) failure of the driver of a motor vehicle involved
22 in an accident resulting in death or injury to any person to
23 stop at the scene of the accident and give the required
24 information and assistance, ~~eight~~ (8) points;

25 (g) willful failure of the driver involved in an

1 accident resulting in property damage of ~~two-hundred-fifty~~
2 ~~dollars-(\$250)~~ to stop at the scene of the accident and give
3 the required information or to otherwise fail to report an
4 accident in violation of the law, ~~four-(4)~~ points;

5 (h) reckless driving, ~~five-(5)~~ points;

6 (i) illegal drag racing or engaging in a speed contest
7 in violation of the law, ~~six-(6)~~ points;

8 (j) operating a motor vehicle without a license to do
9 so, ~~six-(6)~~ points, ~~except as hereafter provided: (this~~
10 ~~subsection (j) does not apply to operating a motor vehicle~~
11 ~~while license has expired within a period of one-hundred-and~~
12 ~~eighty-(180) days from the date the license expired):~~

13 (k) speeding, ~~three-(3)~~ points;

14 (l) all other moving violations, including operation
15 of a motor vehicle without a license to do so ~~where said~~
16 ~~when the license has expired in the previous one-hundred-and~~
17 ~~eighty-(180) days, two-(2) points, (a) there~~ There shall
18 be no multiple application of cumulative points when two (2)
19 or more charges are filed involving a single occurrence. If
20 there are two (2) or more convictions involving a single
21 occurrence, only the number of points for the specific
22 conviction carrying the highest points shall be chargeable
23 against that defendant.

24 (2) "Conviction" means a finding of guilt by duly
25 constituted judicial authority, ~~as~~ a plea of guilty, or a

1 forfeiture of bail, bond, or other security deposited to
2 secure appearance by a person charged with having committed
3 any offense relating to the use or operation of a motor
4 vehicle which is prohibited by law, ordinance, or
5 administrative order.

6 (3) "Administrator" means the Montana highway patrol
7 chief.

8 (4) "Bureau" means the Montana highway patrol bureau.

9 (5) "License" means any ~~and-all-types type~~ of license
10 ~~license or permits permit~~ to operate a motor vehicle."

11 Section 51. Section 40-2905, R.C.M. 1987, is amended
12 to read as follows:

13 "40-2905. "Casualty insurance" defined. (1) Casualty
14 insurance includes:

15 (a) ~~Vehicle vehicle insurance which is insurance~~
16 ~~insurance~~ against loss of or damage to any land vehicle or
17 aircraft or any draft or riding animal or to property while
18 contained therein or thereon or being loaded or unloaded
19 therein or therefrom, from any hazard or cause, and against
20 any loss, liability, or expense resulting from or incidental
21 to ownership, maintenance, or use of any such vehicle,
22 aircraft, or animal, together with insurance against
23 accidental death or accidental injury to individuals,
24 including the named insured, while in, entering, alighting
25 from, adjusting, repairing, cranking, or caused by being

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1 struck by a vehicle, aircraft, or draft or riding animal, if
2 such insurance is issued as an incidental part of insurance
3 on the vehicle, aircraft, or draft or riding animal.

4 (b) ~~Liability liability~~ insurance. ~~Insurance which is~~
5 ~~insurance~~ against legal liability for the death, injury, or
6 disability of any human being, or for damage to property,
7 and provision of medical, hospital, surgical, and disability
8 benefits to injured persons and funeral and death benefits
9 to dependents, beneficiaries, or personal representatives of
10 persons killed, irrespective of legal liability of the
11 insured, when issued as an incidental coverage with or
12 supplemental to liability insurance.

13 (c) ~~Workmen's~~ workers' compensation and employer's
14 liability. ~~Insurance which is insurance~~ of the obligations
15 accepted by, imposed upon, or assumed by employers under law
16 for death, disablement, or injury of employees.

17 (d) ~~Burglary~~ burglary and theft. ~~Insurance which is~~
18 ~~insurance~~ against loss or damage by burglary, theft,
19 larceny, robbery, forgery, fraud, deceptive practices,
20 vandalism, ~~malicious~~ criminal mischief, confiscation, or
21 wrongful conversion, disposal, or concealment, or from any
22 attempt at any of the foregoing, including supplemental
23 coverage for medical, hospital, surgical, and funeral
24 expense incurred by the named insured or any other person as
25 a result of bodily injury during the commission of a

1 burglary, robbery, or theft by another; also insurance
2 against loss of or damage to moneys, coins, bullion,
3 securities, notes, drafts, acceptances, or any other
4 valuable papers and documents, resulting from any cause.

5 (e) ~~Personal~~ personal property floater. ~~Insurance~~
6 ~~which is insurance~~ upon personal effects against loss or
7 damage from any cause under a personal property floater.

8 (f) ~~Glass~~. ~~Insurance glass which is insurance~~ against
9 loss or damage to glass, including its lettering,
10 ornamentation, and fittings.

11 (g) ~~Boiler~~ boiler and machinery. ~~Insurance which is~~
12 ~~insurance~~ against any liability and loss or damage to
13 property or interest resulting from accident to or
14 explosions of boilers, pipes, pressure containers,
15 machinery, or apparatus, and to ~~take from making~~ inspection
16 of and issue issuing certificates of inspection upon
17 boilers, machinery, and apparatus of any kind, whether or
18 not insured.

19 (h) Leakage leakage and fire extinguishing equipment.
20 ~~Insurance which is insurance~~ against loss or damage to any
21 property or interest caused by the breakage or leakage of
22 sprinklers, hoses, pumps, and other fire extinguishing
23 equipment or apparatus, water pipes, or containers, or by
24 water entering through leaks or openings in buildings, and
25 insurance against loss or damage to such sprinklers, hoses,

1 pumps, and other fire extinguishing equipment or apparatus;

2 (i) ~~Credit. Insurance~~ credit which is insurance
3 against loss or damage resulting from failure of debtors to
4 pay their obligations to the insured;

5 (j) ~~Malpractice. Insurance~~ malpractice which is
6 insurance against legal liability of the insured, and
7 against loss, damage, or expense incidental to a claim of
8 such liability, and including medical, hospital, surgical,
9 and funeral benefits to injured persons, irrespective of
10 legal liability of the insured, arising out of the death,
11 injury, or disablement of any person, or arising out of
12 damage to the economic interest of any person, as the result
13 of negligence in rendering expert, fiduciary, or
14 professional service;

15 (k) ~~Elevator. Insurance~~ elevator which is insurance
16 against loss of or damage to any property of the insured,
17 resulting from the ownership, maintenance, or use of
18 elevators, except loss or damage by fire, and ~~to make from~~
19 making inspection of and ~~issue~~ issuing certificates of
20 inspection upon elevators;

21 (l) ~~Livestock. Insurance~~ livestock which is insurance
22 against loss or damage to livestock, and for services of a
23 veterinary for such animals;

24 (m) ~~Entertainments. Insurance~~ entertainments which is
25 insurance indemnifying the producer of any motion picture,

1 television, radio, theatrical, sport, spectacle,
2 entertainment, or similar production, event, or exhibition
3 against loss from interruption, postponement, or
4 cancellation thereof due to death, accidental injury, or
5 sickness of performers, participants, directors, or other
6 principals;

7 (n) ~~Miscellaneous. Insurance~~ miscellaneous which is
8 insurance against any other kind of loss, damage, or
9 liability properly a subject of insurance and not within any
10 other kind of insurance as defined in this chapter, if such
11 insurance is not disapproved by the commissioner as being
12 contrary to law or public policy.

13 (2) Provision of medical, hospital, surgical, and
14 funeral benefits, and of coverage against accidental death
15 or injury, as incidental to and part of other insurance as
16 stated under subdivisions (a) (vehicle), (b) (liability),
17 (d) (burglary), and (j) (malpractice) of subsection (1)
18 shall for all purposes be ~~deemed~~ considered to be the same
19 kind of insurance to which it is so incidental, and shall
20 not be subject to provisions of this code applicable to life
21 or disability insurances."

22 Section 52. Section 40-2906, R.C.M. 1947, is amended
23 to read as follows:

24 "40-2906. "Surety insurance" defined. Surety insurance
25 includes:

(1) ~~Fidelity~~ fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) ~~Insurance~~ insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(3) ~~Insurance~~ insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against check forgery or alteration, or against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals, and articles made therefrom, jewelry, watches, necklaces, bracelets, gears, or precious and semiprecious stones, including any loss while the same are being transported in armored motor vehicles, by mail, or by messenger, but not including any other risks of transportation or navigation; also insurance against loss or damage to such an insured's premises or to his furnishings, fixtures, equipment, safes, and vaults therein, caused by burglary, robbery, theft, vandalism, or malicious criminal mischief, or any attempt thereat."

Section 53. Section 40-3324, R.C.M. 1947, is amended to read as follows:

"40-3324. Reporting and accounting for premiums. (1) All premiums or return premiums received by an agent or solicitor shall be trust funds so received by the licensee in a fiduciary capacity, and the agent or solicitor shall in the applicable regular course of business account for and pay the same to the insured, insurer, or agent entitled thereto. If the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds, he may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any agent or solicitor who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use, ~~shall is~~ upon conviction, be guilty of ~~larceny~~ theft and shall be punished as provided by law."

Section 54. Section 46-104, R.C.M. 1947, is amended to read as follows:

"46-104. Duties and powers of department. The department shall exercise general supervision over, and, so far as possible, protect the livestock interests of the state from theft and disease, and recommend legislation

1 which, in the judgment of the department, fosters this
2 industry. The department may compel the attendance of
3 witnesses, employ counsel to assist in the prosecution of
4 violations of laws made for the protection of the livestock
5 interests, and assist in the prosecution of persons charged
6 with ~~feloniously~~ illegal branding or ~~stealing~~ theft of
7 livestock, or any other crime under the laws of this state
8 for the protection of stock owners. It may adopt rules
9 governing the recording and use of livestock brands."

10 Section 55. Section 46-703, R.C.M. 1947, is amended to
11 read as follows:

12 "46-703. Duties. The stock inspectors and detectives
13 shall arrest all persons who in their presence violate the
14 stock laws of this state. Every stock inspector and
15 detective, on information that a person has committed an
16 offense against the laws of this state by engaging in
17 illegal, ~~in feloniously~~ branding or ~~stealing~~ theft of stock
18 of, or an offense against the laws of this state for the
19 protection of the rights and interests of stock owners, must
20 make the necessary affidavit for the arrest and examination
21 of the person, and on a warrant issued for the person,
22 immediately arrest the person and bring him before the
23 proper officer and notify the department of his acts."

24 Section 56. Section 66-1602, R.C.M. 1947, is amended
25 to read as follows:

1 "66-1602. Search warrant may issue. Whenever any
2 person makes oath before a magistrate that any property
3 belonging to him has been ~~embezzled or taken without his~~
4 ~~consent taken by theft or otherwise without his consent~~, and
5 that he has reason to believe or suspect, and does suspect,
6 that such property has been pledged with any pawnbroker or
7 junk dealer, such magistrate, if satisfied, must issue his
8 warrant to search for the property so taken, and, if found,
9 to seize and bring the same before him."

10 Section 57. Section 67-2129, R.C.M. 1947, is amended
11 to read as follows:

12 "67-2129. Revocation. (1) A registration may be
13 revoked after notice and hearing upon a written finding of
14 fact that the subdivider has:

15 (a) ~~Failed~~ failed to comply with the terms of a cease
16 and desist order;

17 (b) ~~Been~~ been convicted in any court subsequent to the
18 filing of the application for registration of a crime
19 involving fraud, ~~deception~~ deceptive practices, false
20 pretenses, misrepresentation, false advertising, or
21 dishonest dealing in real estate transactions;

22 (c) ~~Disposed~~ disposed of, concealed, or diverted any
23 funds or assets of any person so as to defeat the rights of
24 subdivision purchasers;

25 (d) ~~Failed~~ failed faithfully to perform any

1 stipulation or agreement made with the board as an
2 inducement to grant any registration, to reinstate any
3 registration, or to approve any promotional plan or public
4 offering statement; or

5 (e) Made false intentional misrepresentations or
6 concealed material facts in an application for registration.

7 (2) Findings of fact, if set forth in statutory
8 language, shall be accompanied by a concise and explicit
9 statement of the underlying facts supporting the findings.

10 (2)-(3) If the board finds after notice and hearing
11 that the subdivider has been guilty of a violation for which
12 revocation could be ordered, it may issue a cease and desist
13 order instead."

14 Section 58. Section 69-1929, R.C.M. 1947, is amended
15 to read as follows:

16 "69-1929. Penalty when death caused by violation of
17 this act. When the death of any person is caused by the
18 explosion of any powder, gunpowder, giant or Hercules
19 powder, giant caps, or other highly explosive substance that
20 has been stored, kept, handled, or transported, contrary to
21 the provisions of the foregoing sections, the person or
22 persons who have so unlawfully stored, kept, handled, or
23 transported such explosives, or who may have knowingly or
24 negligently permitted their agents, servants, or employees
25 to so unlawfully store, keep, handle, or transport the same,

1 ~~shall be~~ are guilty of manslaughter, negligent homicide and,
2 on conviction, shall be punished by imprisonment in the
3 state penitentiary prison for a period not exceeding ~~ten~~ 10
4 years."

5 Section 59. Section 72-116, R.C.M. 1947, is amended to
6 read as follows:

7 "72-116. Power of board to fix rates, schedules, and
8 classifications. ~~The power and authority is hereby vested in~~
9 ~~the said~~

10 (1) ~~The board, and it is hereby made its duty to shall~~
11 ~~adopt, as soon as practicable after the organization of the~~
12 ~~board,~~ all necessary rates, charges, and regulations to
13 govern and regulate freight and passenger tariffs, to
14 correct abuses, and prevent unjust discrimination and
15 ~~extortion~~ intimidation in the rates of freight and passenger
16 tariffs on the different railroads in this state, and to
17 make the same effective by enforcing the penalties
18 prescribed in this act. ~~The said board shall have the power,~~
19 ~~and it shall be its duty, to~~ fairly and justly classify and
20 subdivide all freight and merchandise of ~~whatsoever whatever~~
21 character that may be transported over railroads of this
22 state, into such general and special classes or subdivisions
23 as may be deemed considered necessary or expedient. The said
24 board may fix different rates for different railroads and
25 for different lines under the same management, or for

different parts of the same lines, if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads. ~~Said The~~ board shall also ~~have the power, and it shall be its duty, to~~ fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight, and cars that may pass over two or more lines of such railroads.

(2) The rates, tolls, or charges on any property, which shall for any reason remain unclassified by the board, shall not in any event exceed the highest rates fixed for any classification by ~~said the~~ board. ~~And it shall be within the province of the The~~ board to may entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the state of Montana, or any point therein, in the way of rates for the transportation of freight or passengers from points without the state to points within the state, and vice versa, and ~~is~~ In proper cases, where it appears that the United States interstate commerce commission law has been violated, ~~it is hereby made the duty of said the~~ board to ~~make complaint shall complain~~ to the interstate commerce commission of the United States, and to aid such commission in any investigation it may make concerning violations of the United States law, by furnishing evidence, and in any other

manner which may seem best suited to enforce both the United States and state law, and to protect the interests of the people."

Section 60. Section 72-126, R.C.M. 1947, is amended to read as follows:

"72-126. Prohibition against rebates and discrimination. If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, ~~shall charge, demand charges, demands, or receive receives~~ from any person, firm, or corporation, a greater or less compensation for any service rendered, or to be rendered, in the transportation of property subject to the provisions of this act, than that fixed by the said commission for such service, such railroad ~~shall be deemed is~~ guilty of ~~extortion intimidation~~, and shall forfeit and pay to the state of Montana not less than ~~five hundred dollars nor \$500 or more than two thousand dollars \$2,000~~ for each offense; ~~provided, that nothing herein shall be so construed as to prevent. Nothing in this section prevents~~ any railroad or railroad corporation from giving excursion rates to or from any point within or without the state."

Section 61. Section 72-127, R.C.M. 1947, is amended to read as follows:

"72-127. Discrimination in rates and charges. If any railroad subject to this act, or its agents or officers,

1 shall hereafter ~~collect, charge, demand, or receive~~
 2 collects, charges, demands, or receives from any person,
 3 company, firm, or corporation, a greater rate, charge, or
 4 compensation than that fixed and established by the said
 5 commission for the transportation of freight, ~~passenger~~
 6 passengers, or cars, or for the use of any car on the line
 7 of its railroad, or any line operated by it, or for
 8 receiving, forwarding, handling, or storing any such freight
 9 car, or for any other service performed, or to be performed
 10 by it, such railroad and its agents and officers shall be
 11 deemed are guilty of extortion ~~intimidation~~, and shall
 12 forfeit and pay to the state of Montana a sum not less than
 13 ~~five-hundred-dollars-per \$500 or more than two-thousand~~
 14 dollars \$2,000."

15 Section 62. Section 79-811, R.C.M. 1947, is amended to
 16 read as follows:

17 "79-811. Temporary suspension of treasurer. The ~~if,~~
 18 upon examination, the state board of examiners, ~~if, upon~~
 19 ~~examination, find finds~~ that the books of the state
 20 treasurer do not correspond with the amount of funds on
 21 hand, ~~or~~ do not show the actual condition of the funds, ~~or~~
 22 ~~if it appears to said board that any moneys belonging to the~~
 23 ~~state have been embezzled, diverted, or in any manner taken~~
 24 diverted or taken by theft or any other means from the
 25 treasury, without authority of law, or that the state

1 treasurer has been guilty of negligence in keeping his
 2 books, or of taking care of the public moneys, the board
 3 must certify the fact to the governor, who, upon receipt of
 4 such certificate, must ~~forthwith~~ immediately take possession
 5 of all books, moneys, papers, and other property belonging
 6 to the state which have come into the possession of such
 7 state treasurer, by virtue of his office or otherwise, and
 8 must temporarily suspend ~~him~~ the treasurer from ~~his~~ office
 9 ~~of state treasurer."~~

10 Section 63. Section 79-812, R.C.M. 1947, is amended to
 11 read as follows:

12 "79-812. Appointment in place of suspended treasurer.
 13 (1) The state board of examiners must thereupon procure the
 14 services of an expert to examine the books, papers, and all
 15 matters connected with the office of the state treasurer so
 16 suspended, and if it appears to ~~said~~ the board on such
 17 examination that ~~said~~ the state treasurer has ~~embezzled--or~~
 18 converted to his own use or committed theft of the public
 19 moneys, or has been negligent in keeping his books, or in
 20 taking care of the public moneys, the governor, on the
 21 certificate of ~~said~~ the board of that fact, must appoint
 22 another person to fill the place of such suspended state
 23 treasurer, and such person so appointed must execute an
 24 official bond and enter upon the office of state treasurer,
 25 as provided by law.

(2) The governor must report all his acts done under this section and ~~the next preceding section 79-811~~ to the next succeeding legislative ~~assembly~~ legislature, and the state treasurer so appointed holds his office until the suspended state treasurer is restored or his successor is elected and qualified."

Section 64. Section 79-2314, R.C.M. 1947, is amended to read as follows:

"79-2314. Information from state agencies. (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, and records.

(2) The legislative auditor may examine at any time the books, accounts, and records, confidential or otherwise, of a state agency, ~~however, this~~ This shall not be construed as authorizing the publication of information which the law prohibits publishing.

(3) The head of each state agency shall immediately notify the legislative auditor in writing upon the discovery of any ~~larceny, or embezzlement~~ theft, actual or suspected, involving state moneys or property under his control or for which he is responsible."

Section 65. Section 87A-2-403, R.C.M. 1947, is amended to read as follows:

"87A-2-403. Power to transfer -- good faith purchase of goods -- "entrusting". (1) A purchaser of goods acquires

all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

(a) the transferor was deceived as to the identity of the purchaser; ~~or~~

(b) the delivery was in exchange for a check which is later dishonored; ~~or~~

(c) it was agreed that the transaction was to be a "cash sale"; ~~or~~

(d) the delivery was procured through fraud punishable as ~~larcenous~~ theft under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods ~~have~~ has been such as to ~~be-larcenous~~ constitute theft under

1 the criminal law.

2 (4) The rights of other purchasers of goods and of
3 lien creditors are governed by the ~~Chapters~~ chapters on
4 ~~Secured secured transactions transactions~~ (~~Chapter~~ chapter
5 9), ~~Bulk bulk Transfers transfers~~ (~~Chapter~~ chapter 6) and
6 ~~Documents documents of title title~~ (~~Chapter~~ chapter 7)."

7 Section 66. Section 89-714, R.C.M. 1947, is amended to
8 read as follows:

9 "89-714. Penalties. Any person violating any of the
10 provisions of this chapter is punishable as provided in
11 section 94-35-105, and if death ensue ~~ensues~~ arises by reason of
12 any of the acts prohibited by this chapter, the person
13 guilty of the same may be convicted of ~~murder, manslaughter,~~
14 ~~or any other felony, as the case may be~~ homicide."

15 Section 67. Section 91-608, R.C.M. 1947, is amended to
16 read as follows:

17 "91-608. Order to examine party charged with
18 embezzling ~~misappropriating~~ estate. When the public
19 administrator complains to the district court, or a judge
20 thereof, on oath, that any person has concealed, ~~embezzled~~
21 committed theft of, or disposed of, or has in his possession
22 any money, goods, property, or effects, to the possession of
23 which such administrator is entitled in his official
24 capacity, the court or judge may cite such person to appear
25 and may examine him on oath touching the matter of such

1 complaint."

2 Section 68. Section 91-2301, R.C.M. 1947, is amended
3 to read as follows:

4 "91-2301. ~~Embezzling~~ Mishandling of estate before
5 grant of letters testamentary. If any person, before the
6 granting of letters testamentary or of administration,
7 ~~embezzles commits theft of~~ or alienates any of the moneys,
8 goods, chattels, or effects of a decedent, he is charged
9 therewith and liable to an action by the executor or
10 administrator of the estate for double the value of the
11 property so ~~embezzled or alienated~~ mishandled, to be
12 recovered for the benefit of the estate."

13 Section 69. Section 91-2302, R.C.M. 1947, is amended
14 to read as follows:

15 "91-2302. Citation to person suspected ~~to have~~
16 ~~embezzled of having mishandled~~ estate, ~~etc.~~ If any executor
17 or administrator, or any person interested in the estate of
18 a decedent, complains to the court or judge, on oath, that
19 any person is suspected ~~to have of~~ of having concealed,
20 ~~embezzled, smuggled, conveyed away, or disposed of, or~~
21 committed theft of any moneys, goods, or chattels of the
22 decedent, or has in his possession or knowledge any deeds,
23 conveyances, bonds, contracts, or other writings, which
24 contain evidences of or tend to disclose the right, title,
25 interest, or claim of the decedent to any real or personal

estate, or any claim or demand, or any lost will, the said court or judge may cite such person to appear before such the court, and may examine him on oath upon the matter of such the complaint. If such person is not in the county where such the decedent dies, or where letters have been granted, he may be cited and examined either before the district court or judge of the county where the decedent dies, or where letters have been granted. But if he appears and is found innocent, his necessary expenses must be allowed him out of the estate."

Section 70. Section 91-2303, R.C.M. 1947, is amended to read as follows:

"91-2303. Refusal to obey citation, ~~penalty for, and for exorbitant may be compelled to disclose by imprisonment liable for double damages~~ order for disclosure. If the person so cited refuses to appear and submit to an examination, or to answer such interrogatories as may be put to him, touching the matters of the complaint, the court or judge may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he submits to the order of the court, or is discharged according to law. If, upon examination, it appears that he has concealed, ~~embezzled~~, smuggled, conveyed away, or disposed of, ~~or committed theft of~~ any moneys, goods, or chattels of the decedent, or that he has in his possession

or knowledge any deeds, conveyances, bonds, contracts, or other writings containing evidence of or tending to disclose the right, title, interest, or claim of the decedent to any real or personal estate, claim, or demand, or any lost will of the decedent, the court or judge may make an order requiring such person to disclose his knowledge thereof to the executor or administrator, and may commit him to the county jail, there to remain until the order is complied with, or he is discharged according to law; and all such interrogatories and answers must be in writing, signed by the party examined, and filed in the court. The order for such disclosure made upon such examination shall be prima facie evidence of the right of the executor or administrator to such property in any action brought for the recovery thereof, and any judgment recovered therein must be for double the value of the property as assessed by the court or jury, or for the return of the property and damages in addition thereto, equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side."

Section 71. Section 93-4002, R.C.M. 1947, is amended to read as follows:

"93-4002. When defendant may be arrested in a civil action. The defendant may be arrested in the following cases:

1 4-(1) In an action for the recovery of money or
2 damages, on a cause of action arising upon contract, express
3 or implied, when the defendant is about to depart from the
4 state, with intent to defraud his creditors; or when the
5 action is for willful injury to person, to character, or to
6 property, knowing the property to belong to another;

7 4-(2) In an action for a fine or penalty, or for
8 money or property embezzled, or fraudulently misapplied, or
9 converted to his own use, by a public officer, or an officer
10 of a corporation, or an attorney, factor, broker, agent, or
11 clerk, in the course of his employment as such, or by any
12 other person in a fiduciary capacity; or for misconduct or
13 neglect in office, or in a professional employment; or for
14 a willful violation of duty;

15 4-(3) In an action to recover possession of
16 personal property unjustly obtained, when the property, or
17 any part thereof, has been concealed, removed, or disposed
18 of so that it cannot be found, or taken by the sheriff;

19 4-(4) When when the defendant has been guilty of fraud
20 in contracting the debt, incurring the obligation for which
21 the action is brought, or in concealing or disposing of the
22 property, or for taking, detention, or conversion of which
23 the action is brought;

24 5-(5) When when the defendant has removed or disposed
25 of his property, or is about to do so, with intent to

1 defraud his creditors."

2 Section 72. Section 94-8-405, R.C.M. 1947, is amended
3 to read as follows:

4 "94-8-405. Obtaining money by means of gambling games
5 or tricks deemed to be larceny considered theft. Every
6 person who, by means of any game, device, sleight-of-hand
7 trick, or other means whatever, by the use of cards or other
8 implements other than those mentioned in the following
9 section hereof 94-8-406, or while betting on sides, or
10 hands, of any such game or play, fraudulently obtains from
11 another person money or property of any description, shall
12 be deemed is guilty of larceny theft of property of like
13 value."

14 Section 73. Section 95-408, R.C.M. 1947, is amended to
15 read as follows:

16 "95-408. Stolen property. Where when a person obtains
17 property by larceny theft, robbery, false pretenses or
18 embezzlement or deceptive practices, he may be tried in any
19 county in which he exerted control over such property."

20 Section 74. Section 69-1931, R.C.M. 1947, is
21 renumbered 94-8-209.1 and is amended to read as follows:

22 "69-1934 94-8-209.1. Destructive device -- and
23 explosive defined. (1) "Destructive device", as used in this
24 chapter, shall include includes, but is not limited to, the
25 following weapons:

(a) ~~Any~~ a projectile containing ~~any~~ an explosive or incendiary material or any other similar chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;

(b) ~~Any~~ a bomb, grenade, explosive missile, or similar device or ~~any~~ a launching device therefor;

(c) ~~Any~~ a weapon of a caliber greater than .60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun or shotgun ammunition;

(d) ~~Any~~ a rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch, or ~~any~~ a launching device therefor, and ~~any~~ a rocket, rocket-propelled projectile, or similar device containing ~~any~~ an explosive or incendiary material or any other similar chemical substance, other than the propellant for ~~such~~ the device, except ~~such~~ devices ~~as are~~ designed primarily for emergency or distress signaling purposes;

(e) ~~Any~~ a breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive", as used in this chapter, ~~shall mean~~ means any explosive defined in ~~section 69-1901, R.C.M.~~

1947."

Section 75. Section 69-1932, R.C.M. 1947, is renumbered 94-8-209.2 and is amended to read as follows:

~~"69-1932~~ 94-8-209.2. Possession of a destructive device ~~or explosive with felonious intent~~ penalty. (1) ~~Every~~ A person who, with intent the purpose to commit a felony, has in his possession any destructive device ~~or any~~ explosive on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of ~~a felony, the~~ offense of possession of a destructive device.

(2) ~~and~~ A person convicted of the offense of possession of a destructive device shall be ~~punishable by imprisonment~~ imprisoned in the state prison for a period of not more than ~~ten~~ (10) years."

Section 76. Section 94-6-105, R.C.M. 1947, is renumbered 94-8-209.3 and is amended to read as follows:

~~"94-6-105~~ 94-8-209.3. Possession of explosives. (1) A person commits the offense of possession of explosives if he possesses, manufactures, ~~or~~ transports, buys, or sells any an explosive compound, flammable material, or timing, ~~or~~ detonating, or similar device for use with ~~any~~ an explosive

1 compound or incendiary device, and:

2 (a) has the purpose to use such explosive, material,
3 or device to commit ~~any~~ an offense; or

4 (b) knows that another has the purpose to use such
5 explosive, material, or device to commit ~~any~~ an offense.

6 (2) A person convicted of the offense of possession of
7 explosives shall be imprisoned in the state prison for any
8 term not to exceed ~~twenty~~ (20) years."

9 Section 77. There is a new R.C.M. section numbered
10 94-8-209.4 that reads as follows:

11 94-8-209.4. Possession of a silencer. (1) A person
12 commits the offense of possession of a silencer if he
13 possesses, manufactures, transports, buys, or sells a
14 silencer and has the purpose to use it to commit an offense
15 or knows that another person has such a purpose.

16 (2) A person convicted of the offense of possession of
17 a silencer is punishable by imprisonment in the state prison
18 for a term of not less than 5 years or more than 30 years or
19 a fine of not less than \$1,000 or more than \$20,000 or by
20 both such fine and imprisonment.

21 Section 78. There is a new R.C.M. section numbered
22 94-8-209.5 that reads as follows:

23 94-8-209.5. Possession prima facie evidence of
24 unlawful purpose. Possession of a silencer or of an
25 explosive compound, flammable material, or timing,

1 detonating, or similar device for use with an explosive
2 compound or incendiary device is prima facie evidence of a
3 purpose to use the same to commit an offense.

-End-

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LC 0003

1977 Legislature
Code Commissioner Bill - Summary

Senate Bill No. 34

TO GENERALLY REVISE THE LAWS CONCERNING CRIMES.

(This summary does not include discussion of routine form and grammatical changes.)

GENERAL COMMENTS

This bill includes sections from several titles which need amendment to update the names of crimes. The Criminal Law Study Commission made major changes in this area and dropped many of the familiar common law names. For example, "theft" now covers a broad range of conduct including what was formerly called "larceny," "embezzlement," and various kinds of "fraud."

"Defalcation" has not been eliminated because it is used in a general sense rather than in defining a crime. Its meaning, according to Black's Law Dictionary, is broader than theft. See, e.g., section 6-106, R.C.M. 1947.

"Treason" was also retained although there is no statute defining it. The Montana Constitution refers to treason and limits its definition. Therefore, it was decided to keep the procedural provisions that apply to it in case the crime does exist as a state, as opposed to a federal, offense.

In 67-2129(1)(b), "false pretenses" was retained because the section seems to refer to the law of other states. In 31-146(1), "manslaughter" was changed to "negligent homicide" (although it technically also includes mitigated deliberate homicide) because it makes more sense and mitigated deliberate homicide is included in 31-146(3) "any felony . . ." There has been no change in meaning.

EXPLANATION OF SECTION CONSIDERED
BUT NOT INCLUDED IN LC 0003

Section 94-5-501(2) defines "without consent" as used in 94-5-503 and 94-5-505. It has been suggested that 94-5-502 should also be included. However, after consultation with members of the commission, it was determined that the omission of 94-5-502 was intentional and that "without consent" has its ordinary meaning in that section.

SECTIONS OF BILL MERITING SPECIAL ATTENTION

Section 2. 54-133.

Section 7. 94-1-103.

Section 8. 94-1-105.

Section 9. 94-1-106.

Section 10. 94-2-101, introduction and subsection (67) (now subsection (66)).

Section 16. 94-5-503.

Section 18. 94-5-607(2).

Section 19. 94-5-608(2).

Section 22. 94-6-307(1)(c).

Section 24. 94-7-103(1)(a).

Section 32. 94-8-111.

Section 35. 94-8-202.

Section 36. 94-8-203.

Section 37. 94-8-204(2).

Sections 73 through 77. Explosives.

Section 78. Repeals.

Section 1. 54-132. Criminal sale of dangerous drugs. Changed "this act" to "54-301" to clarify where "dangerous drug" is defined. Added "as defined by 54-301" after "professional practice" to correct apparent error of omission and clarify.

Section 2. 54-133. Criminal possession of dangerous drugs. Changed "this act" in subsection (1) to "54-301" to clarify where "dangerous drug" is defined. Deleted last section about jurisdiction - contained in 54-138. Added a new subsection (5) to exempt practitioners and persons with prescriptions - apparent error.

Section 3. 54-134. Fraudulently obtaining dangerous drugs. Added "as defined in 54-301" to clarify where "dangerous drug" is defined. Changed "persons" to "person" - apparent error.

Section 4. 54-135. Altering labels on dangerous drugs. Same change as first change under Section 3. 54-134.

Section 5. 54-137. Alternative sentencing authority. Same change as first change under Section 3. 54-134.

Section 6. 54-138. Jurisdiction. Changed "Montana Dangerous Drug Act" to "this chapter" because the former has never been officially adopted as the title to any act.

Section 7. 94-1-103. Application to offenses committed before and after enactment. Changed "code" in subsection (2) to "title and Title 95" to clarify - "this code" refers only to Title 94 but many of the sentencing (punishment) provisions are in Title 95. Apparently the Criminal Code Commission thought of Titles 94 and 95 as a unit for some purposes.

Section 8. 94-1-105. Classification of offenses. Same change as under Section 7. 94-1-103.

Section 9. 94-1-106. General time limitations. Changed "in this code" to "by law" to clarify. "This code" was ambiguous - apply to the entire R.C.M. or just "The Criminal Code". Since the intent appears to have been to create uniform limitations, the former interpretation was chosen.

Section 10. 94-2-101. General definitions. Clarified introductory clause - the definitions must apply to all of Title 94, whether or not there is a provision in a particular part stating so. For example, in part 1 of chapter 5, the terms "purposely", etc., are used but are not defined except as 94-2-101 applies. (See also the comment under Section 69 of this bill.) In subsection (7), changed "resulted" to "results" - clarification. In subsection (11)(d), added "or is" - apparent error. Deleted subsection (20), contained in 19-103. In subsection (21) (now subsection (20)), changed "one person" to "one or more persons" - clarification. In subsection (38) (now subsection (37)), changed "which resulted" to "resulting" - clarification. Rewrote subsections (49)(e), (f), and (j) (now subsections (48)(e), (f), and (j) to clarify. In subsection (67) (now subsection (66)), added "official" - clarification.

52

Section 11. 94-2-103. General requirements of criminal act and mental state. In subsection (1), corrected internal references to account for renumbering of subsections of 94-2-101. In subsection (2), changed "prescribed" to "prescribes" - apparent error.

Section 12. 94-2-104. Absolute liability. Corrected internal references to account for renumbering of subsections of 94-2-101.

Section 13. 94-2-111. Consent as a defense. In subsection (2)(b), added "it is given by a person who" - apparent error.

Section 14. 94-5-105. Sentence of death for deliberate homicide. In subsection (2), changed "in which" to "and" - clarification.

Section 15. 94-5-501. Definitions. Deleted subsection (1) - redundant with 94-2-101, as amended in this bill.

Section 16. 94-5-503. Sexual intercourse without consent. Added "of the opposite sex" to clarify confusion created when references to gender deleted in 1975. Homosexual rape is covered by 94-5-505. Deviate sexual conduct. The penalty structures and defenses to 94-5-503 and 94-5-505 are different.

Section 17. 94-5-506. Provisions generally applicable to sexual crimes. In subsection (2), changed "extension" to "exclusion" - apparent error.

Section 18. 94-5-607. Endangering the welfare of children. In subsection (2), changed "youth" to "child less than 16 years old" to clarify - the commission comment seems to indicate that the age limitation was intended to apply to both subsections (1) and (2); changed "youth" to "child" for consistency. In subsections (2)(a) and (b), changed "a" to "the" to clarify that the child mentioned in subsection (2) is being referred to. In subsections (3) and (5), added "the" in three places - consistency in terminology.

Section 19. 94-5-608. Nonsupport. Added "or" at end of subsection (2)(a) to clarify that the offense is aggravated nonsupport if either of the circumstances exists. In subsection (4), changed "person or persons" to "any person" - grammatical clarity.

Section 20. 94-5-618. Control of practice of abortion. Corrected internal reference in subsection (2) to account for renumbering of subsections of 94-2-101.

Section 21. 94-6-201. Definition. In subsection (2), changed "action" to "section" - apparent error.

Section 22. 94-6-307. Deceptive practices. In subsection (1)(c), clarified and deleted "knowingly" as an apparent error - "knowingly" appears in introductory clause.

Section 23. 94-6-308.1. Chain distributor schemes. In subsection (3), deleted reference to felony to correct conflict with 94-2-101(15) - the punishment for a first offense calls for classification as a misdemeanor.

Section 24. 94-7-103. Threats and other improper influences in official and political matters. In subsection (1)(a), deleted "unlawful" - there is no apparent reason for its inclusion in subsection (1)(a) but not in subsections (1)(b) and (1)(c). It is desirable to prohibit any sort of threat intended to influence governmental functions or the exercise of the franchise. In subsection (1)(d), deleted "an" - grammatical clarity. Moved part of subsection (1)(d) to new subsection (2) and clarified its application. It was unclear whether it applied just to subsection (1)(d), to the whole section, or to subsections (1)(a) through (1)(d). The last was chosen since it is the most logical and since it is the application found in Model Penal Code, section 240.2, from which subsections (1)(a) through (1)(d) were adopted.

Section 25. 94-7-104. Compensation for past official behavior. Changed "his" to "another's" to clarify.

Section 26. 94-7-207. Tampering with witnesses and informants. In subsection (1)(c), corrected spelling of "evidence". (Note R.C.M. 1947, has two errors which do not appear in the session laws but does not have the misspelling which is in the session laws.)

Section 27. 94-7-307. Transferring illegal articles or unauthorized communication. In subsection (1)(a), added "illegal" in two places to clarify. Same change in subsection (1)(b)(ii). Made last sentence of subsection (1)(b)(ii) new subsection (1)(c) and clarified its application.

Section 28. 94-7-503. Criminal syndicalism. Reworded subsection (2)(c) for grammatical clarity.

Section 29. 94-8-107. Public nuisance. Reworded subsection (5)(a) to clarify - a nuisance is abated, not the property on which it is maintained; "premise" is peculiar usage.

Section 30. 94-8-108. Creating a hazard. In subsection (1)(b), changed "of" to "or" - apparent error. Minor rewording of subsections (1)(b), (1)(d), and (1)(e) for grammatical clarity.

Section 31. 94-8-110.2. Sale and advertisement of contraceptive drugs and devices. Minor revision of subsection (1) for grammatical accuracy and clarity. Divided subsection (2) into further subsections with minor rewording for clarity. In subsection (3), changed "act" to "section" to clarify and deleted "of" and "to" - apparent errors. Added "or" to clarify. Either "and" or "or" was required; "or" was chosen since "and" would be unconstitutional. It was assumed that the legislature intended the constitutional interpretation.

In subsection (4), changed "in" to "is" - apparent error. Changed "act" to "section" to clarify, in subsections (4), (5), (6), (7), and (8).

Section 32. 94-8-111. Criminal defamation. Substantive change. Added "causes" because it seems undesirable to merely require that a business be "exposed" to injury. The wording is peculiar and somewhat unclear without "causes".

Section 33. 94-8-114. Privacy in communications. Reworded subsection (1)(a) for clarity and grammatical accuracy, changing "intent" to "purpose", which is defined. Moved part of subsection (1)(b) to subsection (1)(a) to correct apparent error. In subsection (1)(c), added "any conversation" to clarify. Minor revision of subsection (1)(d) and its subsections and subsection (1)(p) for clarity and grammatical accuracy. In subsection (2), deleted "the" - apparent error.

Section 34. 94-8-201. Definitions. Added an introductory clause to clarify the application of the definitions. In subsection (2), substituted current names for crimes in place of the old names and grouped several of them under "forcible felony", defined in 94-2-101. Note that the reference to "larceny" (now called "theft") was deleted - any theft involving a threat to a person becomes robbery, which, along with "forcible felony", burglary, and criminal trespass, should suffice to cover crimes which are made more dangerous by the use of a machine gun.

Sections 35 and 36. 94-8-202, 94-8-203. Possession or use of machine gun in connection with a crime or for an offensive purpose. SUBSTANTIVE CHANGE. Added maximum penalties. Formerly, there were minimums but no maximums. Since the maximum for robbery is 40 years, 50 years was chosen for the commission of such a crime with a machine gun. There is no real parallel for possession for an offensive purpose - 10 to 20 years was chosen as realistic.

Section 37. 94-8-204. Presumption of offensive or aggressive purpose. In subsection (2), added "the machine gun is" for clarity; deleted "an unnaturalized foreign born person" as blatantly unconstitutional. Note the section was originally enacted in 1935. Changed "of" to "in" - apparent error.

Section 38. 94-8-210. Carrying concealed weapons in cities or towns prohibited. Minor rewording to clarify. Changed "penitentiary" to "prison" to update terminology.

Section 39. 94-8-212. Exceptions. Clarified application in introductory clause. Simplified list and eliminated redundancies. Former subsections (1), (2), (3), (4), (7), (10), and (15) are contained in new subsection (1). Former subsections (5), (6), (8), (16), and (17) are contained in new subsection (2). The rest of the old subsections are unchanged except for the subsection numbers and minor rewording of subsection (11) (now subsection (4)) to clarify and account for the renumbering. Note "peace officer" is defined in 94-2-101.

Section 40. 94-8-214. Permits to carry concealed weapons - records - revocation. Minor rewording for clarity. In subsection (9), clarified "heretofore" (substituted effective date of act).

Section 41. 94-8-218. Firing firearms. Added "other" to clarify.

Section 42. 94-8-221. Use of firearms by children under age fourteen prohibited. Changed "in the company of such parent or guardian" to "accompanied by a person having charge or custody of the child" to clarify that "other person" is included.

Sections 43 through 73. Updated terminology - names of crimes (see general comments in first part of memo).

In section 48, reworded to clarify.

In section 61, changed "passenger" to "passengers" - apparent error.

Section 74. 94-8-209.1 (formerly 69-1931). Destructive device and explosive defined. Transferred from Title 69 to aid recodification. Definitions needed in Title 94 but not in Title 69 since 69-1932 is also being transferred. Added "similar" in subsections (1)(a) and (d) to clarify.

Section 75. 94-8-209.2 (formerly 69-1932). Possession of a destructive device. Transferred from Title 69 to aid recodification. Changed "intent" to "the purpose" which is defined. Deleted "or an explosive" - contained in 94-6-105 (being transferred to 94-8-209.3). Reworded for consistency with the Criminal Code.

Section 76. 94-8-209.3 (formerly 94-6-105). Possession of explosives. Transferred to aid recodification. Added "buys, or sells" and "flammable material" - taken from 94-8-223 which is being repealed to aid recodification. Added "similar" to cover "any instrument or agency" in 94-8-223. Note that 94-8-223 is archaic and conflicts with 94-6-105 (94-8-209.3).

Section 77. 94-8-209.4. Possession of a silencer. New section containing provisions from 94-8-223 which could not be incorporated elsewhere.

Section 78. 94-8-209.5. Possession prima facie evidence of unlawful purpose. New section to preserve provisions of 94-8-225 and 69-1916 (part), which are being repealed.

Section 79. Repealed sections 94-5-601, 94-6-101, 94-6-301, 94-7-101, and 94-7-201. These sections are unnecessary and by negative implication suggest that the definitions in 94-2-101 do not apply to other parts. For example, part 1 of chapter 5 on homicide does not have a section like these specifically stating that the definitions in 94-2-101 apply. Yet its interpretation depends on such terms as "purposely" and "knowingly" defined in 94-2-101. (See also comment under Section 10 of this bill.)

94-5-611 and 94-5-612. These sections, prohibiting abortion, were declared by the court in Doe v. Woodahl, 360 F. Supp. 20, at 22, to be "...unconstitutional and void in their entirety". This decision was based on the U. S. Supreme Court decision in Roe v. Wade, 410 U. S. 113, which cited 94-5-611 in a footnote on page 118 as an example of an unconstitutional state statute. There is no question that under the current law of the land these two sections have no constitutional application.

94-8-224. This is an outdated "aiding and abetting" statute. The terminology is obsolete and undefined. The section is unnecessary and redundant with 94-2-107, which provides that anyone who assists in any crime is as guilty as the principals.

69-1916 and 94-8-223 deal with the possession of explosives and devices. They overlap and conflict with 94-6-105. Any material in them not contained in 94-6-105 is being incorporated into that section or reenacted as a new section (see Section 76 of this bill).

94-8-225 overlaps with 69-1916. Both are being suggested for repeal. A new section to cover both is being proposed which will be clearer and more up-to-date. They deal with presumptions arising from possession of explosives, silencers, etc.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 17, 1977

The meeting of this committee was called to order at 9:30 a.m. in Room 442 by Senator Turnage, Chairman, on the above date.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES APPEARING TO TESTIFY:

Senator Rasmussen - District 16

Tom Stoll, administrator of Inheritance Tax Division, Department of Revenue

Senator Hazelbaker - District 41

CONSIDERATION OF SENATE BILL 58:

Senator Rasmussen, District 16, presented and explained this bill to the committee as he has sponsored it.

Marie Brazier of the Montana Nurses Association was present in support of S.B. 58.

There were no opponents to this bill present at the meeting.

DISPOSITION OF SENATE BILL 58:

Senator Olsen moved that S.B. 58 DO PASS. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 70:

Tom Stoll, administrator of the Inheritance Tax Division of the Montana Department of Revenue, explained the bill to the committee, and told them that this is actually a taxpayer's relief bill.

There were no opponents present on S.B. 70.

DISPOSITION OF SENATE BILL 70:

Senator Warden moved to amend the title of S.B. 70 on line 7 following the word "HOURS" by inserting "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE" and to further amend S.B. 70 on page 2, following line 1, by adding a new section as follows: "Section 3. Effective Date. This act shall be effective upon its passage and approval." The motion carried unanimously.

Senator Warden then moved that S.B. 70, as amended, DO PASS. This motion also carried unanimously.

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CONSIDERATION OF SENATE BILL 30:

The researcher, Joan Mayer, an attorney with the Legislative Council, resumed her explanation of any changes made during the recodification of this bill with section 64 on page 70, and continued through the bill.

DISPOSITION OF SENATE BILL 30:

Senator Warden moved that Senate Bill 30, as amended, DO PASS. The motion carried unanimously.

At this time, the Chairman requested the attorney from the Legislative Council to draft a bill to amend 94-5607 to provide that persons other than parents or guardians can commit the offense of endangering the welfare of children.

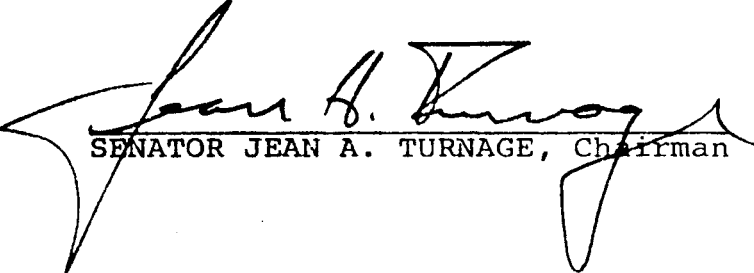
CONSIDERATION OF SENATE BILL 34:

Senator Hazelbaker, sponsor of S.B. 34, was present at this meeting. This is a recodification bill and, therefore, Joan Mayer of the Legislative Council explained the changes which had been made.

Senator Murray moved to amend section 22 on page 34, subsection (c), lines 24 and 25, by striking the "," following "makes" and reinserting the "or", and to further amend by striking the "," after the word "make" and striking the words "or knowingly accepts"; and to further amend on line 25 by striking the word "to" and inserting in lieu thereof the word "from". The motion carried unanimously.

The committee proceeded through section 24 and is to begin with section 25 on page 38 when they resume consideration of S.B. 34.

There being no further time for this meeting, the committee adjourned at 11:10 a.m. to reconvene on January 18, 1977, at 9:30 a.m..


SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY

COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 1-17-77

[illegible]

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 18, 1977

The meeting was called to order by Senator Turnage, Chairman, on the above date at 9:30 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All members were present at the meeting.

WITNESSES PRESENT TO TESTIFY:

Senator Watt - District 49
Gregg L. McCurdy - Montana Association of Counties
William L. Romine - Montana attorney
George Bennett - Helena attorney representing Mountain Bell
Tom Collins - Montana Association of Realators

CONSIDERATION OF SENATE BILL 23:

Senator Watt, sponsor of this bill, explained to the committee why he had it drafted, that it was especially designed to clear up a current problem which Missoula is having in vacating alleys or streets, which problem also occurs in other cities or towns. He said that the abutting property owner should have first right to purchase property vacated.

Gregg McCurdy, Montana Association of Counties, appeared in support of the bill, but with one concern that counties, by law, do not own title to rights-of-way. However, he said they do own the rights-of-access. /7

Bill Romine, a Montana attorney, appeared as an opponent of S.B. 23. Mr. Romine said he feels that there is a definite problem with the amendment made to the bill in the use of the word "dedicated" in lieu of the word "deeded". He also said that he does not understand section 2. He questioned if a few isolated instances in Missoula warrant this bill.

George Bennett, a Helena attorney representing Mountain Bell, said that they have problems with the right-of-ways for utilities in S.B. 23, and that he agrees with Mr. Romine. He told the committee also that, if they saw fit to pass this bill, they will have to make many amendments to it, in particular as to public utilities.

| Tom Collins, Montana Association of Realtors, also appeared as an opponent of S.B. 23.

At this time, Senator Watt said that he agrees with George Bennett that the rights of utilities should be preserved, and that the bill was sent to this committee because he realized the bill

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had problems. He told the committee that any way they dealt with the problems would certainly be appreciated. Further, Senator Watt said that former Senator Drake had recommended that section 2 should be struck entirely. However, he said that he does feel that the city should receive money for purchase of these alleys and streets.

Testimony was then closed on Senate Bill 23 and the witnesses thanked by Chairman Turnage.

At this time the committee secretary was instructed to put out the committee report on the amendments on Senate Bill 30.

DISPOSITION OF SENATE BILL 23:

The committee passed consideration and asked the staff to come up with something on this bill. Senator Towe said he would be glad to suggest to Senator Watt that he introduce a new bill on this subject.

CONSIDERATION OF SENATE BILL 34:

The Legislative Council researcher, Joan Mayer, resumed explanation of the changes made on S.B. 34, beginning with section 25 on page 38.

Senator Lensink moved to strike the word "causes" in section 32, line 14, page 49. The motion carried unanimously.

The committee considered through section 36, page 54, at which time it was necessary for them to go to other meetings.

There being no further business to be transacted at this time, the committee adjourned at 11:00 a.m. to reconvene at 9:30 a.m. on Wednesday, January 19, 1977, in Room 404 for the consideration of Senate Bill 67.

SENATOR JEAN A. TURNAGE, Chairman

ROLL CALL

JUDICIARY

COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date

1/18/77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 29, 1977

The meeting of this committee was called to order on the above date by Senator Turnage, Chairman, at 9:40 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Tom Honzel - Deputy County Attorney, Lewis & Clark County
Senator Tom Hager - District 30

CONSIDERATION OF SENATE BILL 176:

Senator Murray, co-sponsor of this bill with Senator Regan, explained the purpose of the bill to the committee, saying that it would give a 20-day period after a divorce before it became final.

There were no proponents or opponents of the bill present to testify.

DISPOSITION OF SENATE BILL 176:

Senator Warden moved that Senate Bill 176 DO PASS. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 180:

Senator Tom Hager, District 30, sponsor of this bill, told the committee that the county attorneys had assured him it was a simple bill.

Tom Honzel, Deputy County Attorney of Lewis & Clark County, representing the County Attorneys Association, said that the only thing this bill actually does is add the words "or concealment of merchandise" which should clarify the law.

Since there were no other proponents or opponents present to testify, the Chairman allowed the committee to ask questions of Mr. Honzel.

DISPOSITION OF SENATE BILL 180:

Senator Roberts moved to strike section 1 in its entirety and, as so amended, DO PASS.

Senator Regan moved as a substitute motion that S.B. 180 DO NOT PASS.

Senator Roberts then moved as a substitute motion for all motions pending that consideration be passed for the day. This motion carried unanimously.

CONSIDERATION OF SENATE BILL 119:

Joan Mayer, Legislative Council attorney, went over the amendments she had prepared on this bill.

Senator Ragen moved that the committee reconsider their previous action in passing S.B. 119 as amended. This motion carried unanimously.

DISPOSITION OF SENATE BILL 119:

Senator Ragen moved the adoption of the amendments prepared by Joan Mayer. The motion carried unanimously.

Senator Warden moved that S.B. 119 as amended DO PASS. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 34:

The Legislative Council attorney, Joan Mayer, went over the amendment she had prepared to page 95 and the repealers for the committee.

Senator Towe moved the adoption of the repealers. Motion carried.

DISPOSITION OF SENATE BILL 34:

Senator Roberts moved that S.B. 34 as amended DO PASS. The motion carried unanimously.

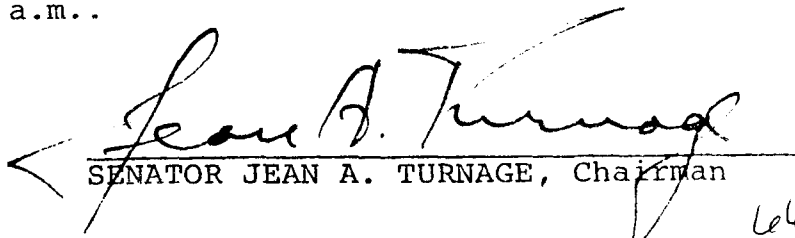
The attorney from the Council is to prepare all amendments passed on Senate Bill 34 in order that the committee may look them over before the Committee Report is filed.

The Chairman asked that Joan call Tom Stoll for his suggested amendments on S.B. 115 for Monday, January 31, 1977. He also tentatively set S.B. 156 consideration for Monday, along with further consideration of Senate Bills 27 and 33.

DISPOSITION OF SENATE BILL 23:

Senator Olson moved that S.B. 23 DO NOT PASS. The motion carried unanimously.

There being no further business before the committee, the committee adjourned at 10:55 a.m..


SENATOR JEAN A. TURNAGE, Chairman

JUDICIARY COMMITTEE

Dat:

[illegible]

STANDING COMMITTEE REPORT

.....January 31,..... 19...77...

MR.PRESIDENT:.....

We, your committee onJUDICIARY.....

having had under considerationSENATE Bill No. 34.....

Respectfully report as follows: That.....SENATE Bill No. 34.....

be amended as follows:

1. Amend page 34

Following: line 11

Insert: "Section 22. Section 94-6-302, R.C.M. 1947, is amended to read as follows:

"94-6-302. Theft. (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the ownery and:

(a) has the purpose of depriving the owner of the property; or

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

DO PASS

---more---

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner; and:

- (a) has the purpose of depriving the owner of the property; or
- (b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or
- (c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another; and:

- (a) has the purpose of depriving the owner of the property; or
- (b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or
- (c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person convicted of the offense of theft of property not exceeding ~~one-hundred-fifty-dollars-(\$150)~~ in value shall be fined not to exceed ~~five-hundred-dollars-(\$500)~~ or be imprisoned in the county jail for any term not to exceed ~~six-(6)~~ months, or both. A person convicted of the offense of theft of property exceeding one hundred-fifty-dollars-(\$150) in value or theft of any commonly domesticated hoofed animal shall be imprisoned in the state prison for any term not to exceed ~~ten-(10)~~ years.

(5) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

Renumber all subsequent sections

---more---

Page 3

2. Amend page 34, section 22, lines 24 and 25.

Following: "makes"

Strike: "2"

Insert: "or"

Following: "make"

Strike: "2 or accepts"

3. Amend page 35, section 22, line 2.

Following: "credit"

Insert: "or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition"

4. Amend page 49, section 31, lines 9 through line 16 on page 50.

Following: page 49, line 8

Strike: section 32 in its entirety

Renumber: all subsequent sections

(section 34)

5. Amend page 53, lines 18 through line 9 on page 54.

Following: page 53, line 17

Strike: sections 35 and 36 in their entirety

Renumber: all subsequent sections

6. Amend page 95, section 78, lines 24 through line 2 on page 96.

Following: "or of"

Strike: "an explosive compound, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device"

Insert: "a bomb or similar device charged or filled with one or more explosives"

7. Amend page 96.

Following: line 3

Insert: "Section 77. Repealer. Sections 69-1916, 94-5-601, 94-5-611, 94-5-612, 94-6-101, 94-6-301, 94-7-101, 94-7-201, 94-8-223, 94-8-224, and 94-8-225, R.C.M. 1947, are repealed."

am. as amended,
DO PASS

Chairman

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 738	revise the laws - detention center and shelter care of youth -	2-9	Meloy	Thurs 17th	do pass	2-19
HB 739	establish a system of no-fault vehicle insurance -	2-9	Brand	Thurs 17th	do not pass	2-24
HB 742	revise - cooperative marketing associations - perpetual existence. etc.	2-9	Williams	Thurs 17th	do pass	2-19
HJR 59	an interim study of the organization of legal services within the executive branch	2-9	Scully	Thurs 17th	do pass	2-19
SB 34	general revision of the laws concerning crimes	2-9	Hazelbaker	March 4th	concurred in	3/22
HJR 63	appointment of a criminal justice legislative drafting commission to design an integrated criminal justice system. etc.	2-10	Holmes	Tues 15	do pass as amended	2-19

JUDICIARY COMMITTEE

March 4, 1977

The regularly scheduled meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. March 4, 1977, in room 436 of the Capitol Building, Helena, Montana. All members were present with the exception of Representatives Kennerly and Colburn.

Scheduled for hearing were Senate Bills 30, 34, 405, 414, 415 and Senate Joint Resolutions 19 and 28. Senate Bill 419 was cancelled at the request of the sponsor Senator Towe, and will be heard at a later date.

THE HEARING OPENED ON SENATE JOINT RESOLUTION 19.

SENATOR LOCKREM, DISTRICT #32:

This bill requests the legislative committee on priorities to assign to an appropriate standing committee a study of legislation to compensate victims of crime and to have the committee report to the 46th legislature. It should not be used to justify killing 357.

PROPONENT, TOM HONZEL, COUNTY ATTORNEYS ASSOCIATION:

We still support that bill but ask that you do give consideration for Senator Lockrem's bill.

REPRESENTATIVE CONROY:

What was the reason for eliminating the portion dealing with the Indians?

SENATOR LOCKREM:

For some reason they felt it was discrimination, and the question of jurisdiction should be encompassed.

There were no further questions and no opponents, the hearing closed on Senate Joint Resolution 19.

THE HEARING OPENED ON SENATE JOINT RESOLUTION #28:

SENATOR THOMAS, DISTRICT #20:

SJR 28 is asking for an interim study on uniform sentencing procedure. This was asked for by Chief Justice Hatfield in his state of the law message.

JUDGE HATFIELD:

Under the criminal justice plan we will be doing the same things and therefore I am in favor of your doing this. The information you are asking for here will be developed.

TOM DOWLING, SHERIFFS AND PEACE OFFICERS:

We support this bill.

TOM HONZEL, COUNTY ATTORNEYS:

We support this resolution. You can readily see there are problems in the present structure of the justice system of the state of

March 4, 1977

Page 2

Montana. I think it is proper to do a study of this. I think most of you are aware that a judge can defer sentencing in a case but in some places they are using deferred prosecution. There are some things that are going on already with or without legislative sanction.

There were no other proponents and no opponents.

SENATOR THOMAS:

We think this is a very important study and I think the state of Montana would benefit.

THE HEARING CLOSED ON SENATE JOINT RESOLUTION #28:

THE HEARING OPENED ON SENATE BILL #405:

SENATOR MEHRENS, DISTRICT #45:

This bill was introduced by request of the state fire marshall.

STATE FIRE MARSHALL:

It was at our request that the Senator introduced the bill. It keeps track of the people in the community who start fires. He suggested an amendment on line 11, page 1, to strike "state fire marshall" and insert "arson".

There were no other proponents and no opponents, and no questions, the hearing closed on Senate Bill #405.

MR. A. J. MURRAY:

I am sorry to be late, but I would like to state my opposition to SJR #19. I have a report in the House Appropriations Committee, "The Victim & Restitution Study".

REPRESENTATIVE CONROY:

If we amended the language back in, would that change your opinion.

MR. MURRAY:

The study included the indian population. He went on to explain the study and the reasoning involved, etc.

CHAIRMAN SCULLY:

I would like to tell you that I talked with Senator Roberts and he said that Senate Bills 414 and 415 are self-explanatory and we, the committee, can do whatever we wish.

THE HEARING OPENED ON SENATE BILL #30:

SENATOR HAZELBAKER, DISTRICT #41:

This is a recod bill and I will let the staff explain it to you.

29

March 4, 1977

Page 3

JOAN MAYER, LEGISLATIVE COUNSEL:

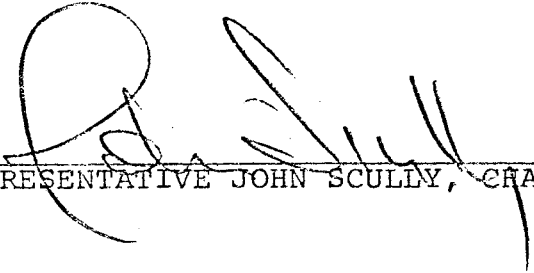
I rewrote this bill to clear it up and to clarify the language. She went through the bill and explained the various sections and what she had done.

SENATE BILL #34:

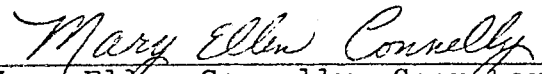
Joan explained that this was also done, the clarification and rewriting.

CHAIRMAN SCULLY suggested that Joan compile a list of the various sections and what she had done in these two bills and give the copy of the explanation to the committee rather than go through it section by section. This she agreed to do.

The meeting adjourned at 8:45 a.m.



REPRESENTATIVE JOHN SCULLY, CHAIRMAN



Mary Ellen Connelly, Secretary

JUDICIARY COMMITTEE
EXECUTIVE SESSION

March 22, 1977

The executive session of the House Judiciary Committee was called to order by Chairman Scully at 8:45 a.m. in room 436 of the Capitol Building, Helena, Montana. All members were present except the following: Representatives Colburn, Conroy, Courtney, Kennerly and Seifert.

HOUSE JOINT RESOLUTION #93:

REPRESENTATIVE LORY moved "do not pass". REPRESENTATIVE DUSSAULT moved a sub-stitute motion "do pass". The motion was tied with the bill going out of committee with no recommendation.

SENATE BILL #33:

REPRESENTATIVE LORY reported from the sub-committee that the bill be concurred in, and moved the motion. The motion carried with the vote unanimous.

SENATE BILL #37:

REPRESENTATIVE RAMIREZ reported he did not have the amendments ready for presentation to the committee. He will have them Friday.

SENATE BILL #34:

REPRESENTATIVE LORY moved that the sub-committee report of "be concurred in" be adopted. The motion carried with the vote unanimous.

SENATE BILL #53:

REPRESENTATIVE KEYSER moved to amend. The amendments as proposed were voted upon and the motion carried with vote unanimous. REPRESENTATIVE LORY moved "be concurred in as amended". The motion carried with the vote unanimous. (amendments attached)

SENATE BILL #216:

REPRESENTATIVE DAY reported the water sub-committee had voted to table this bill. The Judiciary Committee accepted the committee report to table and the motion carried with the vote unanimous.

SENATE BILLS #413 and 419:

These bills are still in sub-committee for work and study. The committee will report on Friday.

SENATE BILL #385:

REPRESENTATIVE KEYSER moved be concurred in. The motion carried with the vote unanimous.

REPRESENTATIVE HOLMES came in late to committee and moved the committee reconsider its action on Senate Bill #385. The motion failed with only one yes vote. Representative Holmes asked that she be recorded as a no vote on this bill.

SENATE BILL #27:

REPRESENTATIVE RAMIREZ moved to amend on page 36. The motion carried with the vote unanimous. REPRESENTATIVE LORY moved to amend on pages

SENATE BILL NO. 34

INTRODUCED BY HAZELBAKER

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
REVISION OF THE LAWS CONCERNING CRIMES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 54-132, R.C.M. 1947, is amended to
read as follows:

"54-132. Criminal sale of dangerous drugs. ~~(a)(1)~~ A
person commits the offense of a criminal sale of dangerous
drugs if he sells, barter, exchanges, gives away, or offers
to sell, barter, exchange, or give away ~~or~~ manufactures,
prepares, cultivates, compounds, or processes any dangerous
drug, as defined in ~~this act~~ 54-301.

~~(b)(2)~~ A person convicted of criminal sale of
dangerous drugs shall be imprisoned in the state prison for
a term ~~or~~ not less than ~~one~~(1) year ~~nor~~ ~~or~~ more than life.

~~(c)(3)~~ Practitioners and agents under their
supervision acting in the course of a professional practice,
as defined by 54-301, are exempt from this section."

Section 2. Section 54-133, R.C.M. 1947, is amended to
read as follows:

"54-133. Criminal possession of dangerous drugs.
~~(a)(1)~~ A person commits the offense of criminal possession

of dangerous drugs if he possesses any dangerous drug, as
defined in ~~this act~~ 54-301.

~~(b)(2)~~ Any person convicted of a criminal possession
of ~~marihuana~~ marijuana or its derivatives in an amount, the
aggregate weight of which does not exceed ~~sixty~~(60) grams
of ~~marihuana~~ marijuana or ~~one~~(1) gram of hashish, ~~shall~~
is, for the first offense, be guilty of a misdemeanor and ~~is~~
punishable by a fine not to exceed ~~one--thousand--dollars~~
~~(\$1,000)~~ or by imprisonment in the county jail for a term
not to exceed ~~one~~(1) year or by both such fine and
imprisonment. A person convicted of a second, or subsequent,
offense under this subsection is punishable by a fine not to
exceed ~~one--thousand--dollars~~(~~\$1,000~~) or by imprisonment in
the county jail for a term not to exceed ~~one~~(1) year or in
the state prison for a term not to exceed ~~three~~(3) years or
by both such fine and imprisonment.

~~(c)(4)~~ A person convicted of criminal possession of
dangerous drugs not otherwise provided for in subsection
~~(b)(2)~~ shall be imprisoned by ~~imprisonment~~ in the state
prison for a term not to exceed ~~five~~(5) years.

~~(d)(4)~~ A person of the age of ~~twenty-one~~(21) years or
under, convicted of a first violation under this section
shall be presumed to be entitled to a deferred imposition of
sentence.

~~Jurisdiction under this section shall be exclusively in~~

There are no changes in SB 34, and due to length will not
be rerun. Please refer to yellow copy for complete text.

SB 34

REFERENCE BILL

Approved by Committee
on Judiciary

SENATE BILL NO. 34

INTRODUCED BY HAZELBAKER

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prepares, cultivates, compounds, or processes any dangerous
drug, as defined in ~~this act~~ 54-301.

~~(b)(2)~~ A person convicted of criminal sale of
dangerous drugs shall be imprisoned in the state prison for
a term of not less than ~~one~~ one year ~~or~~ or more than life.

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of ~~marihuana~~ marijuana or its derivatives in an amount, the
aggregate weight of which does not exceed ~~sixty~~ sixty grams
of ~~marihuana~~ marijuana, or ~~one~~ one gram of hashish, ~~shall~~
is, for the first offense, be guilty of a misdemeanor and ~~is~~
punishable by a fine not to exceed ~~one thousand dollars~~
(\$1,000) or ~~by~~ imprisonment in the county jail for a term
not to exceed ~~one~~ one year, or ~~by~~ both such fine and
imprisonment. A person convicted of a second, or subsequent,
offense under this subsection is punishable by a fine not to
exceed ~~one thousand dollars~~ (\$1,000) or ~~by~~ imprisonment in
the county jail for a term not to exceed ~~one~~ one year or in
the state prison for a term not to exceed ~~three~~ three years or
~~by~~ both such fine and imprisonment.

~~(c)(3)~~ A person convicted of criminal possession of
dangerous drugs not otherwise provided for in subsection
~~(b)(2)~~ shall be imprisoned ~~by imprisonment~~ in the state
prison for a term not to exceed ~~five~~ five years.

~~(d)(4)~~ A person of the age of ~~twenty-one~~ twenty-one years or
under, convicted of a first violation under this section
shall be presumed to be entitled to a deferred imposition of
sentence.

~~Jurisdiction under this section shall be exclusively in~~

Please retain this yellow copy of SB 34 for your files,
it will not be rerun in its entirety in blue.

SECOND READING

~~the district court.~~

(5) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 54-301, are exempt from this section."

Section 3. Section 54-134, R.C.M. 1947, is amended to read as follows:

"54-134. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug, as defined in 54-301, by:

~~(a)~~ (1) fraud, deceit, misrepresentation, or subterfuge;

~~(b)~~ (2) falsely assuming the title of, or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other ~~persons~~ person authorized to possess dangerous drugs;

~~(c)~~ (3) the use of a forged, altered, or fictitious prescription;

~~(d)~~ (4) the use of a false name or a false address on a prescription; or

~~(e)~~ (5) the concealment of a material fact."

Section 4. Section 54-135, R.C.M. 1947, is amended to read as follows:

"54-135. Altering labels on dangerous drugs. A person

commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to or otherwise misrepresents a package or receptacle containing a dangerous drug, ~~or otherwise misrepresents the package containing a dangerous drug as defined in 54-301.~~

Section 5. Section 54-137, R.C.M. 1947, is amended to read as follows:

"54-137. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs, fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 54-301, either from the face of the record or by a presentence investigation, may, in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than ~~six~~ (6) months ~~or~~ or more than ~~two~~ (2) years."

Section 6. Section 54-138, R.C.M. 1947, is amended to read as follows:

"54-138. Jurisdiction. The district court ~~shall have~~ has exclusive trial jurisdiction over all prosecutions commenced under ~~the Montana Dangerous Drug Act~~ this chapter."

Section 7. Section 94-1-103, R.C.M. 1947, is amended to read as follows:

1 "94-1-103. Application to offenses committed before
2 and after enactment. (1) The provisions of this code shall
3 apply to any offense defined in this code and committed
4 after ~~the effective date thereof~~ January 1, 1974.

5 (2) Unless otherwise expressly provided, or unless the
6 context otherwise requires, the provisions of this code
7 shall title and Title 95 govern the construction of and
8 punishment for any offense defined outside of this code and
9 committed after ~~the effective date thereof~~ January 1, 1974,
10 as well as the construction and application of any defense
11 to a prosecution for such an offense.

12 (3) The provisions of this code do not apply to any
13 offense defined outside of this code and committed before
14 ~~the effective date thereof~~ January 1, 1974. Such an offense
15 must be construed and punished according to the provisions
16 of law existing at the time of the commission thereof in the
17 same manner as if this code had not been enacted."

18 Section 8. Section 94-1-105, R.C.M. 1947, is amended
19 to read as follows:

20 "94-1-105. Classification of offenses. (1) For the
21 determination of the court's jurisdiction at the
22 commencement of the action and for the determination of the
23 commencement of the period of limitations, the offense shall
24 be designated a felony or misdemeanor based upon the maximum
25 potential sentence which could be imposed by statute.

1 (2) An offense defined by any statute of this state
2 other than this code shall be classified as provided in this
3 section and the sentence that may be imposed upon conviction
4 thereof shall be governed by this ~~code~~ title and Title 95."

5 Section 9. Section 94-1-106, R.C.M. 1947, is amended
6 to read as follows:

7 "94-1-106. General time limitations. (1) A prosecution
8 for criminal homicide may be commenced at any time.

9 (2) Except as otherwise provided ~~in this code by law~~,
10 prosecutions for other offenses are subject to the following
11 periods of limitation:

12 (a) a prosecution for ~~any~~ a felony must be commenced
13 within ~~five~~ (5) years after it is committed;

14 (b) a prosecution for a misdemeanor must be commenced
15 within ~~one~~ (1) year after it is committed.

16 (3) The period prescribed in subsection (2) is
17 extended in a prosecution for theft involving a breach of
18 fiduciary obligation to an aggrieved person as follows:

19 (a) ~~if~~ if the aggrieved person is a minor or
20 incompetent, ~~then~~ during the minority or incompetency or
21 within ~~one~~ (1) year after the termination thereof;

22 (b) ~~in~~ in any other instance, within ~~one~~ (1) year
23 after the discovery of the offense by the aggrieved person,
24 or by a person who has legal capacity to represent an
25 aggrieved person, or has a legal duty to report the offense,

1 and is not himself a party to the offense, or, in the
2 absence of such discovery, within ~~one~~ (1) year after the
3 prosecuting officer becomes aware of the offense.

4 (4) An offense is committed either when every element
5 occurs, or, when the offense is based upon a continuing
6 course of conduct, at the time when the course of conduct is
7 terminated. Time starts to run on the day after the offense
8 is committed.

9 (5) A prosecution is commenced either when an
10 indictment is found or an information or complaint is
11 filed."

12 Section 10. Section 94-2-101, R.C.M. 1947, is amended
13 to read as follows:

14 "94-2-101. General definitions. Unless otherwise
15 specified in the statute, all words will be taken in the
16 objective standard rather than in the subjective, and
17 unless a different meaning plainly is required, the
18 following definitions apply in this title:

19 (1) "Acts" has its usual and ordinary grammatical
20 meaning and includes any bodily movement, any form of
21 communication, and, where relevant, ~~includes~~ a failure or
22 omission to take action.

23 (2) "Another" means a person or persons as defined in
24 this code other than the offender.

25 (3) "Administrative proceeding" means any proceeding

1 the outcome of which is required to be based on a record or
2 documentation prescribed by law, or in which a law or a
3 regulation is particularized in its application to an
4 individual.

5 (4) "Benefit" means gain or advantage, or anything
6 regarded by the beneficiary as gain or advantage, including
7 benefit to any other person or entity in whose welfare he is
8 interested, but not an advantage promised generally to a
9 group or class of voters as a consequence of public measures
10 which a candidate engages to support or oppose.

11 (5) "Bodily injury" means physical pain, illness, or
12 any impairment of physical condition and includes mental
13 illness or impairment.

14 (6) "Cohabit" means to live together under the
15 representation of being married.

16 (7) "Common scheme" means a series of acts or
17 omissions motivated by a purpose to accomplish a single
18 criminal objective, or by a common purpose or plan and which
19 resulted results in the repeated commission of the same
20 offense or affects the same person or the same persons or
21 the property thereof.

22 (8) "Conduct" means an act or series of acts, and the
23 accompanying mental state.

24 (9) "Conviction" means a judgment of conviction or
25 sentence entered upon a plea of guilty or upon a verdict or

1 finding of guilty of an offense, rendered by a legally
2 constituted jury or by a court of competent jurisdiction
3 authorized to try the case without a jury.

4 (10) "Correctional institution" means the state prison,
5 county or city jail, or other institution for the
6 incarceration or custody of persons under sentence for
7 offenses or awaiting trial or sentence for offenses.

8 (11) "Deception" means knowingly to:

9 (a) create or confirm in another an impression which
10 is false and which the offender does not believe to be true;
11 ~~or~~

12 (b) fail to correct a false impression which the
13 offender previously has created or confirmed; ~~or~~

14 (c) prevent another from acquiring information
15 pertinent to the disposition of the property involved; ~~or~~

16 (d) sell or otherwise transfer or encumber property,
17 failing to disclose a lien, adverse claim, or other legal
18 impediment to the enjoyment of the property, whether such
19 impediment is or is not of value or is or is not a matter of
20 official record; or

21 (e) promise performance which the offender does not
22 intend to perform or knows will not be performed. Failure to
23 perform standing alone is not evidence that the offender did
24 not intend to perform.

25 (12) "Defamatory matter" means anything which exposes a

1 person or a group, class, or association to hatred,
2 contempt, ridicule, degradation, or disgrace in society, or
3 injury to his or its business or occupation.

4 (13) "Deprive" means to withhold property of another:

5 (a) permanently; ~~or~~

6 (b) for such a period as to appropriate a portion of
7 its value; ~~or~~

8 (c) with the purpose to restore it only upon payment
9 of reward or other compensation; or

10 (d) to dispose of the property and use or deal with
11 the property so as to make it unlikely that the owner will
12 recover it.

13 (14) "Deviate sexual relations" means sexual contact or
14 sexual intercourse between two ~~(2)~~ persons of the same sex,
15 or any form of sexual intercourse with an animal.

16 (15) "Felony" means an offense in which the sentence
17 imposed upon conviction is death or imprisonment in the
18 state prison for any term exceeding ~~one~~ ~~(1)~~ year.

19 (16) "A frisk" is a search by an external patting of a
20 person's clothing.

21 (17) "Forcible felony" means any felony which involves
22 the use or threat of physical force or violence against any
23 individual.

24 (18) "Government" includes any branch, subdivision, or
25 agency of the government of the state or any locality within

1 it.

2 (19) "Harm" means loss, disadvantage, or injury, or
3 anything so regarded by the person affected, including loss,
4 disadvantage, or injury to any person or entity in whose
5 welfare he is interested.

6 ~~(20) "He, she, it." The singular term shall include the~~
7 ~~plural and the masculine gender the feminine except where a~~
8 ~~particular context clearly requires a different meaning.~~

9 ~~(21) (20)~~ "A house of prostitution" means any place
10 where prostitution or promotion of prostitution is regularly
11 carried on by one ~~(1)~~ person or more persons under the
12 control, management, or supervision of another.

13 ~~(22) (21)~~ "Human being" means a person who has been born
14 and is alive.

15 ~~(23) (22)~~ "An illegal article" is an article or thing
16 which is prohibited by statute, rule, ~~regulation~~ or order
17 from being in the possession of a person subject to official
18 detention.

19 ~~(24) (23)~~ "Inmate" means a person who engages in
20 prostitution in or through the agency of a house of
21 prostitution.

22 ~~(25) (24)~~ "Intoxicating substance" means any controlled
23 substance as defined in chapter 3 of Title 54, ~~R.C.M., 1947,~~
24 and any alcoholic beverage including but not limited to any
25 beverage containing ~~one-half-of-one-per-centum~~ (1/2 of 1%)

1 or more of alcohol by volume, ~~provided, that the~~ The
2 foregoing definition shall not extend to dealcoholized wine,
3 ~~nor or~~ to any beverage or liquid produced by the process by
4 which beer, ale, port, or wine is produced, if it contains
5 less than ~~one-half-of-one-per-centum~~ (1/2 of 1%) of alcohol
6 by volume.

7 ~~(26) (25)~~ "An involuntary act" means any act which is:

- 8 (a) a reflex or convulsion; ~~or~~
9 (b) a bodily movement during unconsciousness or sleep;

10 ~~or~~

11 (c) conduct during hypnosis or resulting from hypnotic
12 suggestion; or

13 (d) a bodily movement that otherwise is not a product
14 of the effort or determination of the actor, either
15 conscious or habitual.

16 ~~(27) (26)~~ "Juror" means any person who is a member of
17 any jury, including a grand jury, impaneled by any court in
18 this state in any action or proceeding or by any officer
19 authorized by law to impanel a jury in any action or
20 proceeding. The term "juror" also includes a person who has
21 been drawn or summoned to attend as a prospective juror.

22 ~~(28) (27)~~ "Knowingly" ~~---A~~ a person acts knowingly with
23 respect to conduct or to a circumstance described by a
24 statute defining an offense when he is aware of his conduct
25 or that the circumstance exists. A person acts knowingly

1 with respect to the result of conduct described by a statute
 2 defining an offense when he is aware that it is highly
 3 probable that such result will be caused by his conduct.
 4 When knowledge of the existence of a particular fact is an
 5 element of an offense, such knowledge is established if a
 6 person is aware of a high probability of its existence.
 7 Equivalent terms such as "knowing" or "with knowledge" have
 8 the same meaning.

9 ~~(29)~~ (28) "Mentally defective" means that a person
 10 suffers from a mental disease or defect which renders him
 11 incapable of appreciating the nature of his conduct.

12 ~~(30)~~ (29) "Mentally incapacitated" means that a person
 13 is rendered temporarily incapable of appreciating or
 14 controlling his conduct as result of the influence of an
 15 intoxicating substance.

16 ~~(31)~~ (30) "Misdemeanor" means an offense in which the
 17 sentence imposed upon conviction is imprisonment in the
 18 county jail for any term, or fine, or both, or the sentence
 19 imposed is imprisonment in the state prison for any term of
 20 one 1 year or less.

21 ~~(32)~~ (31) "Negligently"--A person acts negligently
 22 with respect to a result or to a circumstance described by a
 23 statute defining an offense when he consciously disregards a
 24 risk that the result will occur or that the circumstance
 25 exists, or if he disregards a risk of which he should be

1 aware that the result will occur or that the circumstance
 2 exists. The risk must be of such a nature and degree that to
 3 disregard it involves a gross deviation from the standard of
 4 conduct that a reasonable person would observe in the
 5 actor's situation. Gross deviation means a deviation that is
 6 considerably greater than lack of ordinary care. Relevant
 7 terms such as "negligent" and "with negligence" have the
 8 same meaning.

9 ~~(33)~~ (32) "Obtain" means:

10 (a) in relation to property, to bring about a transfer
 11 of interest or possession, whether to the offender or to
 12 another; and

13 (b) in relation to labor or services, to secure the
 14 performance thereof.

15 ~~(34)~~ (33) "Obtains or exerts control" includes but is
 16 not limited to the taking, carrying away, or the sale,
 17 conveyance, or transfer of title to, or interest in, or
 18 possession of property.

19 ~~(35)~~ (34) "Occupied structure" means any building,
 20 vehicle, or other place suited for human occupancy or night
 21 lodging of persons or for carrying on business, whether or
 22 not a person is actually present. Each unit of a building
 23 consisting of two ~~(2)~~ or more units separately secured or
 24 occupied is a separate occupied structure.

25 ~~(36)~~ (35) "Offender" means a person who has been or is

liable to be arrested, charged, convicted, or punished for a public offense.

~~(37)~~ (36) "Offense" means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors.

~~(38)~~ (37) "Official detention" means imprisonment ~~which resulted~~ resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society, ~~but~~ "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

~~(39)~~ (38) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

~~(40)~~ (39) "Other state" means any state or territory of

the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

~~(41)~~ (40) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

~~(42)~~ (41) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs, or conducts, or participates in directing or conducting party affairs at any level of responsibility.

~~(43)~~ (42) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

~~(44)~~ (43) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

~~(45)~~ (44) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

~~(46)~~ (45) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate

1 unwillingness to act.

2 ~~(47)~~ (46) "Possession" is the knowing control of
3 anything for a sufficient time to be able to terminate
4 control.

5 ~~(48)~~ (47) "Premises" includes any type of structure or
6 building and any real property.

7 ~~(49)~~ (48) "Property" means anything of value. Property
8 includes, but is not limited to:

9 (a) real estate;

10 (b) money;

11 (c) commercial instruments;

12 (d) admission or transportation tickets;

13 (e) written instruments ~~representing~~ which represent
14 ~~or embodying~~ embody rights concerning anything of value,
15 including labor or services, or which are otherwise of
16 value to the owner;

17 (f) things growing on, ~~or~~ or affixed to, or found on
18 land, ~~or and things which are~~ or part of or affixed to any
19 building;

20 (g) electricity, gas, and water;

21 (h) birds, animals, and fish, which ordinarily are
22 kept in a state of confinement;

23 (i) food and drink, samples, cultures, microorganisms,
24 specimens, records, recordings, documents, blueprints,
25 drawings, maps, and whole or partial copies, descriptions,

1 photographs, prototypes, or models thereof, ~~or~~ and

2 (j) any other articles, materials, devices,
3 substances, and whole or partial copies, descriptions,
4 photographs, prototypes, or models thereof which constitute,
5 represent, evidence, reflect, or record secret scientific,
6 technical, merchandising, production, or management
7 information, or a secret designed process, procedure,
8 formula, invention, or improvement.

9 ~~(50)~~ (49) "Property of another" means real or personal
10 property in which a person other than the offender has an
11 interest which the offender has not authority to defeat or
12 impair, even though the offender himself may have an
13 interest in the property.

14 ~~(51)~~ (50) "Public place" means any place to which the
15 public or any substantial group thereof has access.

16 ~~(52)~~ (51) "Public servant" means any officer or employee
17 of government, including but not limited to, legislators,
18 judges, and firemen, and any person participating as a
19 juror, advisor, consultant, administrator, executor,
20 guardian, or court-appointed fiduciary, ~~but the~~ The term
21 does not include witnesses. The term public servant includes
22 one who has been elected or designated to become a public
23 servant.

24 ~~(53)~~ (52) "Purposely"---A a person acts purposely with
25 respect to a result or to conduct described by a statute

1 defining an offense if it is his conscious object to engage
2 in that conduct or to cause that result. When a particular
3 purpose is an element of an offense, the element is
4 established although such purpose is conditional, unless the
5 condition negatives the harm or evil sought to be prevented
6 by the law defining the offense. Equivalent terms such as
7 "purpose" and "with the purpose" have the same meaning.

8 ~~(54)~~ (53) "Serious bodily injury" means bodily injury
9 which creates a substantial risk of death or which causes
10 serious permanent disfigurement, or protracted loss or
11 impairment of the function or process of any bodily member
12 or organ, and it includes serious mental illness or
13 impairment.

14 ~~(55)~~ (54) "Sexual contact" means any touching of the
15 sexual or other intimate parts of the person of another for
16 the purpose of arousing or gratifying the sexual desire of
17 either party.

18 ~~(56)~~ (55) "Sexual intercourse" means penetration of the
19 vulva, anus, or mouth of one person by the penis of another
20 person, or penetration of the vulva or anus of one person by
21 any body member of another person, or penetration of the
22 vulva or anus of one person by any foreign instrument or
23 object manipulated by another person for the purpose of
24 arousing or gratifying the sexual desire of either party.
25 Any penetration, however slight, is sufficient.

1 ~~(57)~~ (56) "Solicit" or "solicitation" means to command,
2 authorize, urge, incite, request, or advise another to
3 commit an offense.

4 ~~(58)~~ (57) "State" or "this state" means the state of
5 Montana, and all the land and water in respect to which the
6 state of Montana has either exclusive or concurrent
7 jurisdiction, and the air space above such land and water.

8 ~~(59)~~ (58) "Statute" means any act of the legislature of
9 this state.

10 ~~(60)~~ (59) "Stolen property" means property over which
11 control has been obtained by theft.

12 ~~(61)~~ (60) "A stop" is the temporary detention of a
13 person that results when a peace officer orders the person
14 to remain in his presence.

15 ~~(62)~~ (61) "Tamper" means to interfere with something
16 improperly, meddle with it, make unwarranted alterations in
17 its existing condition, or deposit refuse upon it.

18 ~~(63)~~ (62) "Threat" means a menace, however communicated,
19 to:

20 (a) inflict physical harm on the person threatened or
21 any other person or on property; or

22 (b) subject any person to physical confinement or
23 restraint; or

24 (c) commit any criminal offense; or

25 (d) accuse any person of criminal offense; or

1 (e) expose any person to hatred, contempt, or
2 ridicule; ~~or~~

3 (f) harm the credit or business repute of any person;
4 ~~or~~

5 (g) reveal any information sought to be concealed by
6 the person threatened; ~~or~~

7 (h) take action as an official against anyone or
8 anything, ~~or~~ withhold official action, or cause such action
9 or withholding; ~~or~~

10 (i) bring about or continue a strike, boycott, or
11 other similar collective action if the property is not
12 demanded or received for the benefit of the groups which he
13 purports to represent; or

14 (j) testify or provide information or withhold
15 testimony or information with respect to another's legal
16 claim or defense.

17 ~~(64)~~ (63) (a) "Value" means the market value of the
18 property at the time and place of the crime, or, if such
19 cannot be satisfactorily ascertained, the cost of the
20 replacement of the property within a reasonable time after
21 the crime. If the offender appropriates a portion of the
22 value of the property, the value shall be determined as
23 follows:

24 (i) The value of an instrument constituting an
25 evidence of debt, such as a check, draft, or promissory

1 note, shall be deemed the amount due or collectible thereon
2 or thereby, such figure ordinarily being the face amount of
3 the indebtedness less any portion thereof which has been
4 satisfied.

5 (ii) The value of any other instrument which creates,
6 releases, discharges, or otherwise affects any valuable
7 legal right, privilege, or obligation shall be deemed the
8 amount of economic loss which the owner of the instrument
9 might reasonably suffer by virtue of the loss of the
10 instrument.

11 (b) When it cannot be determined if the value of the
12 property is more or less than ~~one hundred fifty dollars~~
13 ~~(\$150)~~ by the standards set forth in subsection ~~(64)~~ (a)
14 (63) (a) above, its value shall be deemed to be an amount
15 less than ~~one hundred fifty dollars~~ ~~(\$150)~~.

16 (c) Amounts involved in thefts committed pursuant to a
17 common scheme or the same transaction, whether from the same
18 person or several persons, may be aggregated in determining
19 the value of the property.

20 ~~(65)~~ (64) "Vehicle" means any device for transportation
21 by land, water, or air, or mobile equipment with provision
22 for transport of an operator.

23 ~~(66)~~ (65) "Weapon" means any instrument, article, or
24 substance which, regardless of its primary function, is
25 readily capable of being used to produce death or serious

1 bodily injury.

2 ~~467~~ 466 "Witness" means a person whose testimony is
3 desired in any official proceeding, ~~or~~ in any investigation
4 by a grand jury, or in a criminal action, prosecution, or
5 proceeding."

6 Section 11. Section 94-2-103, R.C.M. 1947, is amended
7 to read as follows:

8 "94-2-103. General requirements of criminal act and
9 mental state. (1) A person is not guilty of an offense,
10 other than an offense which involves absolute liability,
11 unless, with respect to each element described by the
12 statute defining the offense, he acts while having one ~~(4)~~
13 of the mental states described in ~~sections 94-2-101-(28),~~
14 ~~94-2-101(32) and 94-2-101(52)~~ subsections (27), (31), and
15 (52) of 94-2-101.

16 (2) If the statute defining an offense ~~prescribed~~
17 prescribes a particular mental state with respect to the
18 offense as a whole, without distinguishing among the
19 elements thereof, the prescribed mental state applies to
20 each such element.

21 (3) Knowledge that certain conduct constitutes an
22 offense, or knowledge of the existence, meaning, or
23 application of the statute defining an offense, is not an
24 element of the offense unless the statute clearly defines it
25 as such.

1 (4) A person's reasonable belief that his conduct does
2 not constitute an offense is a defense if:

3 (a) the offense is defined by an administrative
4 regulation or order which is not known to him and has not
5 been published or otherwise made reasonably available to
6 him, and he could not have acquired such knowledge by the
7 exercise of due diligence pursuant to facts known to him; ~~or~~

8 (b) he acts in reliance upon a statute which later is
9 determined to be invalid; ~~or~~

10 (c) he acts in reliance upon an order or opinion of
11 the Montana supreme court or a United States appellate court
12 later overruled or reversed; or

13 (d) he acts in reliance upon an official
14 interpretation of the statute, regulation, or order defining
15 the offense, made by a public officer or agency legally
16 authorized to interpret such statute.

17 (5) If a person's reasonable belief is a defense under
18 subsection (4) ~~of this section~~, nevertheless he may be
19 convicted of an included offense of which he would be guilty
20 if the law were as he believed it to be.

21 (6) Any defense based upon this section is an
22 affirmative defense."

23 Section 12. Section 94-2-104, R.C.M. 1947, is amended
24 to read as follows:

25 "94-2-104. Absolute liability. A person may be guilty

of an offense without having, as to each element thereof, one of the mental states described in ~~94-2-101 (20)~~, ~~94-2-101 (22)~~, and ~~94-2-101 (53)~~ subsections (27), (31), and (52) of 94-2-101 only if the offense is punishable by a fine not exceeding ~~five hundred dollars (\$500)~~, and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described."

Section 13. Section 94-2-111, R.C.M. 1947, is amended to read as follows:

"94-2-111. Consent as a defense. (1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; ~~or~~

(b) ~~it is given by a person who~~ by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; ~~or~~

(c) it is induced by force, duress, or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to."

Section 14. Section 94-5-105, R.C.M. 1947, is amended to read as follows:

"94-5-105. Sentence of death for deliberate homicide. (1) ~~When~~ Unless there are mitigating circumstances, when a defendant is convicted of the offense of deliberate homicide, the court shall impose a sentence of death in any ~~of~~ the following circumstances, ~~unless there are mitigating circumstances:~~

(a) The deliberate homicide was committed by a person serving a sentence of imprisonment in the state prison; ~~or~~

(b) The defendant was previously convicted of another deliberate homicide; ~~or~~

(c) The deliberate homicide was committed by means of torture; ~~or~~

(d) The deliberate homicide was committed by a person lying in wait or ambush; ~~or~~

(e) The deliberate homicide was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(2) ~~Notwithstanding~~ Notwithstanding the provisions of subsection (1) and regardless of circumstances, when a defendant is convicted of the offense of deliberate homicide under subsection (1) (a) of ~~section~~ 94-5-102 ~~in which~~ and the victim was a peace officer killed while performing his duty, the court shall impose a sentence of death."

Section 15. Section 94-5-501, R.C.M. 1947, is amended to read as follows:

"94-5-501. Definitions. ~~(1) In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-401 apply.~~

~~(2)~~ As used in sections 94-5-503 and 94-5-505, the term "without consent" means:

~~(a)~~ (1) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or ~~kidnapping~~ kidnapping to be inflicted on anyone; or

~~(b)~~ (2) the victim is incapable of consent because he is:

~~(i)~~ (a) mentally defective or incapacitated; or

~~(ii)~~ (b) physically helpless; or

~~(iii)~~ (c) less than ~~sixteen~~ (16) years old."

Section 16. Section 94-5-503, R.C.M. 1947, is amended to read as follows:

"94-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person of the opposite sex not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for any term not to exceed ~~twenty~~ (20) years.

(3) If the victim is less than ~~sixteen~~ (16) years old and the offender is ~~three~~ (3) or more years older than the victim, or if the offender inflicts bodily injury upon

anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term not to exceed ~~forty~~ (40) years.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) Evidence evidence of the victim's past sexual conduct with the offender;

(b) Evidence evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

(6) If the defendant proposes, for any purpose, to offer evidence described in subsection (5) (a) or (b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under ~~this~~ subsection (5).

~~(6)~~ (7) If the issue of failure to make a timely complaint or immediate outcry is raised, the jury shall be informed that such fact, standing alone, may not bar conviction."

1 Section 17. Section 94-5-506, R.C.M. 1947, is amended
2 to read as follows:

3 "94-5-506. Provisions generally applicable to sexual
4 crimes ~~(94-5-504 to 94-5-506)~~. (1) When criminality depends
5 on the victim being less than ~~sixteen~~ (16) years old, it is
6 a defense for the offender to prove that he reasonably
7 believed the child to be above that age. Such belief shall
8 not be deemed reasonable if the child is less than ~~fourteen~~
9 (14) years old.

10 (2) Whenever the definition of an offense excludes
11 conduct with a spouse, the ~~extension~~ exclusion shall be
12 deemed to extend to persons living as ~~an~~ husband and wife,
13 regardless of the legal status of their relationship. The
14 exclusion shall be inoperative as respects spouses living
15 apart under a decree of judicial separation. Where the
16 definition of an offense excludes conduct with a spouse,
17 this shall not preclude conviction of a spouse in a sexual
18 act which he or she causes another person, not within the
19 exclusion, to perform.

20 (3) In a prosecution under the preceding sections on
21 sexual crimes (94-5-502 ~~to~~ through 94-5-504) in which the
22 victim's lack of consent is based solely upon his incapacity
23 to consent because he was mentally incapacitated, it is a
24 defense to such prosecution that the victim was a voluntary
25 social companion of the defendant, and the intoxicating

1 substance was voluntarily and knowingly taken."

2 Section 18. Section 94-5-607, R.C.M. 1947, is amended
3 to read as follows:

4 "94-5-607. Endangering the welfare of children. (1) A
5 parent, guardian, or other person supervising the welfare of
6 a child less than ~~sixteen~~ (16) years old commits the offense
7 of endangering the welfare of children if he knowingly
8 endangers the child's welfare by violating a duty of care,
9 protection, or support.

10 (2) A parent, guardian, or other person commits the
11 offense of endangering the welfare of children if he
12 knowingly contributes to the delinquency of a ~~youth~~ child
13 less than 16 years old by:

14 (a) supplying or encouraging the use of intoxicating
15 substances by a the child; or

16 (b) assisting, promoting, or encouraging a the child
17 to leave or abandon his place of residence without the
18 consent of his parents or guardian, to enter a place of
19 prostitution, to engage in sexual conduct, or to enter
20 places exclusively for adults.

21 (3) A person convicted of endangering the welfare of
22 children shall be fined not to exceed ~~five hundred dollars~~
23 ~~(\$500)~~ or be imprisoned in the county jail for any term not
24 to exceed ~~six~~ (6) months, or both. A person convicted of a
25 second offense of endangering the welfare of children shall

1 be fined not to exceed ~~one thousand dollars~~ (\$1,000) or be
2 imprisoned in the county jail for any term not to exceed ~~six~~
3 ~~(6)~~ months, or both.

4 (4) ~~Evidence~~. On the issue of whether there has been a
5 violation of the duty of care, protection, and support, the
6 following, in addition to all other admissible evidence,
7 ~~shall be~~ is admissible: cruel treatment, ~~abuse~~, ~~infliction~~
8 of unnecessary and cruel punishment, ~~abandonment~~,
9 neglect, ~~lack~~ of proper medical care, clothing, shelter,
10 and food; and evidence of past bodily injury.

11 (5) The court may order, in its discretion, any fine
12 levied or any bond forfeited upon a charge of endangering
13 the welfare of children paid to or for the benefit of the
14 person or persons whose welfare the defendant has
15 endangered."

16 Section 19. Section 94-5-608, R.C.M. 1947, is amended
17 to read as follows:

18 "94-5-608. Nonsupport. (1) A person commits the
19 offense of nonsupport if he fails to provide support which
20 he can provide and which he knows he is legally obliged to
21 provide to a spouse, child, or other dependent.

22 (2) A person commits the offense of aggravated
23 nonsupport if:

24 (a) the offender has left the state to avoid the duty
25 of support; or

1 (b) the offender has been previously convicted of the
2 offense of nonsupport.

3 (3) A person convicted of nonsupport shall be fined
4 not to exceed ~~five hundred dollars~~ (\$500) or be imprisoned
5 in the county jail for any term not to exceed ~~six~~ ~~(6)~~
6 months, or both. A person convicted of aggravated nonsupport
7 shall be imprisoned in the state prison for any term not to
8 exceed ~~ten~~ ~~(10)~~ years.

9 (4) The court may order, in its discretion, any fine
10 levied or any bond forfeited upon a charge of nonsupport
11 paid to or for the benefit of any person ~~or persons~~ that the
12 defendant has failed to support."

13 Section 20. Section 94-5-618, R.C.M. 1947, is amended
14 to read as follows:

15 "94-5-618. Control of practice of abortion. (1) No
16 abortion may be performed within the state of Montana:

17 (a) ~~Except~~ except by a licensed physician;

18 (b) ~~After~~ after the first ~~three~~ 3 months of pregnancy,
19 except in a hospital licensed by the department;

20 (c) ~~After~~ after viability of the fetus, unless in
21 appropriate medical judgment, the abortion is necessary to
22 preserve the life or health of the mother. An abortion under
23 this subsection (1) (c) may only be performed if:

24 (i) the foregoing judgment of the physician who is to
25 perform the abortion is first certified in writing by him,

1 setting forth in detail the facts upon which he relies in
2 making such judgment; and

3 (ii) two other licensed physicians have first examined
4 the patient and concurred in writing with such judgment. The
5 foregoing certification and concurrence is not required if a
6 licensed physician certifies the abortion is necessary to
7 preserve the life of the mother.

8 (2) The timing and procedure used in performing an
9 abortion under subsection (1)(c) of this section must be
10 such that the viability of the fetus is not intentionally or
11 negligently endangered, as the term "negligently" is defined
12 in ~~section 94-2-101(32)~~ (31). The fetus may be intentionally
13 endangered or destroyed only if necessary to preserve the
14 life or health of the mother.

15 (3) No physician, facility, or other person or agency
16 shall engage in solicitation, advertising, or other form of
17 communication having the purpose of inviting, inducing, or
18 attracting any person to come to such physician, facility,
19 or other person or agency to have an abortion or to purchase
20 abortifacients.

21 (4) Violation of subsections (1) and (2) of this
22 section is a felony. Violation of subsection (3) of this
23 section is a misdemeanor."

24 Section 21. Section 94-6-201, R.C.M. 1947, is amended
25 to read as follows:

1 "94-6-201. ~~Definitions~~ Definition. (1) "Enter or
2 remain unlawfully". A person enters or remains unlawfully in
3 or upon any vehicle, ~~or~~ occupied structure, or premises when
4 he is not licensed, invited, or otherwise privileged to do
5 so. A person who enters or remains upon land does so with
6 privilege unless notice is personally communicated to him by
7 an authorized person, or unless such notice is given by
8 posting in a conspicuous manner.

9 (2) In no event shall civil liability be imposed upon
10 the owner or occupier of premises by reason of any privilege
11 created by this ~~action~~ section."

12 SECTION 22. SECTION 94-6-302, R.C.M. 1947, IS AMENDED
13 TO READ AS FOLLOWS:

14 "94-6-302. Theft. (1) A person commits the offense of
15 theft when he purposely or knowingly obtains or exerts
16 unauthorized control over property of the owner, and:

17 (a) has the purpose of depriving the owner of the
18 property; ~~or~~

19 (b) purposely or knowingly uses, conceals, or abandons
20 the property in such manner as to deprive the owner of the
21 property; or

22 (c) uses, conceals, or abandons the property knowing
23 such use, concealment, or abandonment probably will deprive
24 the owner of the property.

25 (2) A person commits the offense of theft when he

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purposely or knowingly obtains by threat or deception control over property of the owner, and:

(a) has the purpose of depriving the owner of the property; or

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another, and:

(a) has the purpose of depriving the owner of the property; or

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person convicted of the offense of theft of property not exceeding ~~one hundred fifty dollars~~ ~~(\$150)~~ in value shall be fined not to exceed ~~five hundred dollars~~ ~~(\$500)~~ or be imprisoned in the county jail for any term not

to exceed ~~six~~ ~~(6)~~ months, or both. A person convicted of the offense of theft of property exceeding ~~one hundred fifty dollars~~ ~~(\$150)~~ in value or theft of any commonly domesticated hoofed animal shall be imprisoned in the state prison for any term not to exceed ~~ten~~ ~~(10)~~ years.

(5) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

Section 23. Section 94-6-307, R.C.M. 1947, is amended to read as follows:

"94-6-307. Deceptive practices. (1) A person commits the offense of deceptive practices when he purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred; or

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services; or

(c) makes ~~or~~ ~~or~~ directs another to make ~~or~~ ~~or~~ knowingly accepts a false or deceptive statement to any person respecting his financial condition for the purpose of procuring a loan or credit OR ACCEPTS A FALSE OR DECEPTIVE

STATEMENT FROM ANY PERSON WHO IS ATTEMPTING TO PROCURE A
LOAN OR CREDIT REGARDING THAT PERSON'S FINANCIAL CONDITION:

or

(d) obtains, or attempts to obtain property, labor, or services by any of the following means:

(i) ~~using~~ using a credit card which was issued to another, without the other's consent;

(ii) ~~using~~ using a credit card that has been revoked or canceled;

(iii) ~~using~~ using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) ~~using~~ using the pretended number or description of a fictitious credit card;

(v) ~~using~~ using a credit card which has expired provided ~~that~~ the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed ~~five hundred dollars~~ ~~(\$500)~~ or be imprisoned in the county jail for ~~any~~ a term not to exceed ~~six~~ ~~(6)~~ months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained, or attempted to be obtained exceeds ~~one hundred fifty dollars~~ ~~(\$150)~~, then the offender shall be imprisoned in the state prison for ~~any~~ a term not to exceed ~~ten~~ ~~(10)~~ years.

Section 24. Section 94-6-308.1, is amended to read as follows:

"94-6-308.1. Chain distributor schemes. (1) As used in this ~~act~~ ~~[section]~~:

(a) "~~Person~~ person" means a natural person, corporation, partnership, trust, or other entity; and in the case of an entity it shall include any other entity which has a majority interest in such entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each entity;

(b) "~~Chain~~ chain distributor scheme" means a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment, and may further perpetuate the chain of persons who are granted such license or right upon such condition.

(2) It is unlawful for any person to promote, sell, or encourage participation in any chain distributor scheme.

(3) Any person violating the provisions of this ~~act~~ ~~[section]~~ shall, ~~be deemed guilty of a felony and~~ upon conviction, ~~shall~~ be imprisoned in the state prison for a period not to exceed ~~one~~ ~~(1)~~ year, or ~~punishable by a fine~~ fined not to exceed ~~one thousand dollars~~ ~~(\$1,000)~~, or both

1 ~~such fine and imprisonment.~~

2 (4) Any person convicted of a second offense under
3 this ~~act~~ [section] shall be imprisoned in the state prison
4 for a period not to exceed ~~five~~ (5) years or ~~punishable by a~~
5 ~~fine~~ fined not to exceed ~~five thousand dollars~~ (\$5,000), or
6 both ~~such fine and imprisonment.~~"

7 Section 25. Section 94-7-103, R.C.M. 1947, is amended
8 to read as follows:

9 "94-7-103. Threats and other improper influence in
10 official and political matters. (1) A person commits an
11 offense under this section if he purposely or knowingly:

12 (a) threatens unlawful harm to any person with the
13 purpose to influence his decision, opinion, recommendation,
14 vote, or other exercise of discretion as a public servant,
15 party official, or voter; ~~or~~

16 (b) threatens harm to any public servant with the
17 purpose to influence his decision, opinion, recommendation,
18 vote, or other exercise of discretion in a judicial or
19 administrative proceeding; ~~or~~

20 (c) threatens harm to any public servant or party
21 official with the purpose to influence him to violate his
22 duty; ~~or~~

23 (d) privately addresses to any public servant who has
24 or will have ~~an~~ official discretion in a judicial or
25 administrative proceeding any representation, entreaty,

1 argument, or other communication designed to influence the
2 outcome on the basis of considerations other than those
3 authorized by law. ~~It is no defense to prosecution under~~
4 ~~this section that a person whom the offender sought to~~
5 ~~influence was not qualified to act in the desired way,~~
6 ~~whether because he had not yet assumed office, or lacked~~
7 ~~jurisdiction, or for any other reason; or~~

8 (e) as a juror, or officer in charge of a jury,
9 receives or permits to be received any communication
10 relating to any matter pending before such jury, except
11 according to the regular course of proceedings.

12 (2) It is no defense to prosecution under subsections
13 (1)(a) through (1)(d) that a person whom the offender sought
14 to influence was not qualified to act in the desired way,
15 whether because he had not yet assumed office or lacked
16 jurisdiction or for any other reason.

17 ~~(2)(3)~~ A person convicted under this section shall be
18 fined not to exceed ~~five hundred dollars~~ (\$500) or be
19 imprisoned in the county jail for any term not to exceed ~~six~~
20 ~~(6)~~ months, or both, unless the offender threatened to
21 commit an offense or made a threat with the purpose to
22 influence a judicial or administrative proceeding, in which
23 case the offender shall be imprisoned in the state prison
24 for any term not to exceed ~~ten~~ (10) years."

25 Section 26. Section 94-7-104, R.C.M. 1947, is amended

1 to read as follows:

2 "94-7-104. Compensation for past official behavior.

3 (1) A person commits an offense under this section if he
4 knowingly solicits, accepts, or agrees to accept any
5 pecuniary benefit as compensation for having, as a public
6 servant, given a decision, opinion, recommendation, or vote
7 favorable to another, or for having otherwise exercised a
8 discretion in his another's favor, or for having violated
9 his duty. A person commits an offense under this section if
10 he knowingly offers, confers, or agrees to confer
11 compensation, ~~acceptance of~~ which is prohibited by this
12 section.

13 (2) A person convicted under this section shall be
14 fined not to exceed ~~five hundred dollars~~ (\$500) or be
15 imprisoned in the county jail for any term not to exceed ~~six~~
16 ~~(6)~~ months, or both."

17 Section 27. Section 94-7-207, R.C.M. 1947, is amended
18 to read as follows:

19 "94-7-207. Tampering with witnesses and informants.

20 (1) A person commits the offense of tampering with witnesses
21 and informants if, believing that an official proceeding or
22 investigation is pending or about to be instituted, he
23 purposely or knowingly attempts to induce or otherwise cause
24 a witness or informant to:

25 (a) testify or inform falsely; or

1 (b) withhold any testimony, information, document, or
2 thing; or

3 (c) elude legal process summoning him to testify or
4 supply evidence ~~evidence~~; or

5 (d) absent himself from any proceeding or
6 investigation to which he has been summoned.

7 (2) A person convicted of tampering with witnesses or
8 informants shall be imprisoned in the state prison for any
9 term not to exceed ~~ten~~ (10) years."

10 Section 28. Section 94-7-307, R.C.M. 1947, is amended
11 to read as follows:

12 "94-7-307. Transferring illegal articles or
13 unauthorized communication. (1) ~~Transferring--Illegal~~
14 ~~Articles.~~ (a) A person commits the offense of transferring
15 illegal articles if he knowingly or purposely transfers any
16 illegal article or thing to a person subject to official
17 detention or is transferred any illegal article or thing by
18 a person subject to official detention.

19 (b) A person convicted of transferring illegal
20 articles shall be:

21 (i) imprisoned in the state prison for a term not to
22 exceed ~~twenty~~ (20) years, if he conveys a weapon to a person
23 subject to official detention; or

24 (ii) fined not to exceed ~~one hundred dollars~~ (\$100) if
25 ~~he conveys any other article or thing to a person subject to~~

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1 ~~official--detention~~ or be imprisoned in the county jail for
2 any term not to exceed ~~ten--(10)~~ days, or both, if he conveys
3 any other illegal article or thing to a person subject to
4 official detention.

5 (c) This shall Subsection (1)(b)(ii) does not apply
6 unless the offender knew or was given sufficient notice so
7 that he reasonably should have known that the article or
8 thing he conveyed was an illegal article.

9 ~~(2) Unauthorized Communication.~~

10 (2) (a) A person commits the offense of unauthorized
11 communication if he knowingly or purposely communicates with
12 a person subject to official detention without the consent
13 of the person in charge of such official detention.

14 (b) A person convicted of the offense of unauthorized
15 communication shall be fined not to exceed ~~one hundred~~
16 ~~dollars--(\$100)~~ or be imprisoned in the county jail for any
17 term not to exceed ~~ten--(10)~~ days, or both."

18 Section 29. Section 94-7-503, R.C.M. 1947, is amended
19 to read as follows:

20 "94-7-503. Criminal syndicalism. (1) "Criminal
21 syndicalism" means the advocacy of crime, ~~or~~ malicious
22 damage or injury to property, ~~or~~ violence, or other unlawful
23 methods of terrorism as a means of accomplishing industrial
24 or political ends.

25 (2) A person commits the offense of criminal

1 syndicalism if he purposely or knowingly:

2 (a) orally or by means of writing, advocates or
3 promotes the doctrine of criminal syndicalism; ~~or~~

4 (b) organizes or becomes a member of any assembly,
5 group, or organization which he knows is advocating or
6 promoting the doctrine of criminal syndicalism; or

7 (c) for or on behalf of another ~~who purposely thereby~~
8 whose purpose is to advocate or promote the doctrine of
9 criminal syndicalism, distributes, sells, publishes, or
10 publicly displays, any writing advocating or advertising
11 such doctrine.

12 (3) A person convicted of the offense of criminal
13 syndicalism shall be imprisoned in the state prison for a
14 term not to exceed ~~ten--(10)~~ years.

15 (4) Whoever, being the owner or in possession or
16 control of any premises, knowingly permits any assemblage of
17 persons to use such ~~premise~~ premises for the purpose of
18 advocating or promoting the doctrine of criminal syndicalism
19 shall be fined not to exceed ~~five hundred dollars--(\$500)~~ or
20 ~~be imprisoned in the county jail for a term not to exceed~~
21 ~~six--(6) months,~~ or both."

22 Section 30. Section 94-8-107, R.C.M. 1947, is amended
23 to read as follows:

24 "94-8-107. Public nuisance. (1) "Public nuisance"
25 means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons; ~~or~~

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage, any public highway or ~~right-of-way~~, right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts, or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood, or any considerable number of persons (as specified in subsection (1) (a) ~~of this section~~), is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) A person convicted of maintaining a public nuisance shall be fined not to exceed ~~five hundred dollars~~ (\$500) or be imprisoned in the county jail for a term not to exceed ~~six~~ (6) months, or both. Each day of such conduct constitutes a separate offense.

(5) Action to abate a public nuisance.

(a) Every ~~premise upon which~~ a public nuisance is

~~being maintained~~ may be abated, and the persons maintaining such nuisance and the possessor ~~of the premises~~ who permits the same to be maintained may be enjoined from such conduct by an action in equity in the name of the state of Montana by the county attorney, or any resident of the state.

(b) Upon the filing of the complaint in such action the judge may issue a temporary injunction.

(c) In such action evidence of the general reputation of the premises ~~shall be~~ is admissible for the purpose of proving the existence of ~~such~~ the nuisance.

(d) If the existence of the nuisance ~~be~~ is established, an order of abatement shall be entered as part of the judgment in the case. The judge issuing ~~such~~ the order may, in his discretion:

(i) confiscate all fixtures used on the premises to maintain the nuisance and either sell them and transmit the proceeds to the county general fund, ~~or~~ destroy them, or return them to their rightful ownership; ~~or~~

(ii) close the premises for any period not to exceed ~~one~~ (1) year, and during ~~such~~ which period the premises shall remain in the custody of the court; ~~or~~

(iii) allow the premises to be opened upon posting bond sufficient in amount to assure compliance with the order of abatement. The bond shall be forfeited if the nuisance is continued or resumed. The procedure for forfeiture ~~and/or~~

1 discharge of the bond shall be as provided in ~~section~~
2 95-1116, ~~i~~ or

3 (iv) any combination of the above."

4 Section 31. Section 94-8-108, R.C.M. 1947, is amended
5 to read as follows:

6 "94-8-108. Creating a hazard. (1) A person commits the
7 offense of creating a hazard if he knowingly:

8 (a) discards in any place where it might attract
9 children, a container having a compartment of more than ~~one~~
10 ~~and one-half~~ ~~(1 1/2)~~ cubic feet capacity and a door or lid
11 that locks or fastens automatically when closed and cannot
12 easily be opened from the inside, and fails to remove the
13 door, lid, or locking or fastening device; ~~or~~

14 (b) being the owner ~~of~~ or otherwise having possession
15 of property upon which there is a well, cistern, cesspool,
16 mine shaft, or other hole of a depth of ~~four~~ ~~(4)~~ feet or
17 more and a top width of ~~twelve~~ ~~(12)~~ inches or more, and he
18 fails to cover or fence it with a suitable protective
19 construction; ~~or~~

20 (c) tampers with an aircraft without the consent of
21 the owner; ~~or~~

22 (d) being the owner or otherwise ~~have~~ having
23 possession of property upon which there is a steam engine or
24 steam boiler, he continues to use a steam engine or steam
25 boiler which is in an unsafe condition; ~~or~~

1 (e) being a person in the act of game hunting, ~~he~~ acts
2 in a negligent manner or knowingly fails to give all
3 reasonable assistance to any person whom he has injured; or

4 (f) deposits any hard substance upon or between any
5 railroad tracks, which will tend to derail railroad cars or
6 other vehicles.

7 (2) A person convicted of the offense of creating a
8 hazard shall be fined not to exceed ~~five hundred dollars~~
9 ~~(\$500)~~ or be imprisoned in the county jail for a term not to
10 exceed ~~six~~ ~~(6)~~ months, or both."

11 Section 32. Section 94-8-110.2, R.C.M. 1947, is
12 amended to read as follows:

13 "94-8-110.2. Contraceptive Sale and advertisement of
14 contraceptive drugs ~~or~~ and devices. (1) It ~~shall be~~ is
15 unlawful for any person, firm, corporation, ~~partnership~~
16 partnership, or association to sell, offer for sale, or give
17 away, ~~through the medium~~ by means of vending machines,
18 personal or collective distribution, by solicitation, or
19 peddling or in any other manner whatsoever, contraceptive
20 drugs or devices, prophylactic rubber goods, or other
21 articles for the prevention of venereal diseases. ~~The~~
22 ~~foregoing provisions shall~~ This subsection does not apply to
23 regularly licensed practitioners of medicine, or osteopathy,
24 ~~or~~ other licensed persons practicing other healing arts, ~~and~~
25 registered pharmacists, ~~not to~~ or wholesale drug jobbers or

manufacturers who sell to retail stores only.

(2) It ~~shall be~~ is unlawful to:

(a) exhibit or display prophylactics or contraceptives in any show window, upon the streets, or in any public place, other than in the place of business of a licensed pharmacist; ~~or~~

(b) to advertise such in any magazine, newspaper, or other form of publication, originating in, or published within the state of Montana;

(c) to publish, or distribute from house to house or upon the streets, any circular, booklet, or other form of advertising, of prophylactics or contraceptives; or

(d) advertise such by other visual means, ~~or by~~ auditory method, or by radio broadcast, or by the use of outside signs on stores, billboards, window displays, or other advertising visible to persons upon the streets or public highways, ~~provided, however, that~~

(3) ~~nothing~~ Nothing in this ~~act shall prevent~~ section prevents the advertising of prophylactics or contraceptives in the trade press, ~~of~~ those magazines whose principal circulation is to the medical and pharmaceutical professions, ~~or to~~ those magazines and other publications having interstate circulation, or originating outside of the state of Montana where the advertising does not violate any United States law or federal postal regulation.

~~(4) or to~~ Nothing in this section prevents the furnishing within the store or place of business of a licensed pharmacist, to persons qualified to purchase, and then only upon their inquiry, such printed or other information as ~~is~~ is requisite to proper use in relation to any merchandise coming within the provisions of this ~~act~~ section.

~~(5) provided, nothing herein shall prevent~~ Nothing in this section prevents the dissemination of medically acceptable contraceptive information by printed or other methods concerning the availability and use of any merchandise coming within the provisions of this ~~act~~ section.

~~(3) (6)~~ Any officer of the law ~~shall have the power to~~ may cause the arrest of ~~any~~ a person violating any provision of this ~~act~~ section, to seize stocks illegally held, and ~~to~~ make seizure of seize any mechanical device or vending machine containing any merchandise coming within the provisions of this ~~act~~ section, holding the owner of ~~such~~ the machine, and the occupier and ~~the~~ owner of the premises where seizure is made to be in violation of this ~~act~~ section.

~~(4) (7)~~ Any person, ~~or~~ any member of a firm, or ~~separtnership~~ partnership, or the officers of a corporation or association who ~~or which~~ knowingly ~~violates~~ violate any

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of the provisions of this ~~act shall be~~ section are guilty of a misdemeanor, and shall, upon conviction, be punished by a fine not to exceed ~~five hundred dollars (\$500),~~ or by imprisonment of not to exceed ~~six (6)~~ months in the county jail, or both, ~~provided, however, that the~~

(8) justice Justice of the peace courts and the district courts of the state shall have concurrent jurisdiction in all prosecutions and causes arising under this ~~act~~ section."

~~Section 32. Section 94-8-111, R.C.M., 1947, is amended to read as follows:~~

~~"94-8-111. Criminal defamation. (1) Defamatory matter is anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society, or causes injury to his or its business or occupation.~~

~~(2) Whoever with knowledge of its defamatory character, orally, in writing, or by any other means, communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than six (6) months in the county jail or a fine of not more than five hundred dollars (\$500), or both.~~

~~(3) Violation of subsection (2) is justified if:~~

~~(a) the defamatory matter is true and is communicated~~

~~with good motives and for justifiable ends; or~~

~~(b) the communication is absolutely privileged; or~~

~~(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern; or~~

~~(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or~~

~~(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further such interest or duty.~~

~~(4) No person shall may be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two (2) other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty."~~

Section 33. Section 94-8-114, R.C.M. 1947, is amended to read as follows:

"94-8-114. Privacy in communications. (1) A person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) ~~Communicates with any person by telephone~~ with the intent purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with any person by telephone

~~ex- use and uses~~ any obscene, lewd, or profane language, ~~or suggest suggests~~ any lewd or lascivious act, or ~~threaten threatens~~ to inflict injury or physical harm to the person or property of any person, ~~(the use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend);~~

(b) ~~uses~~ uses a telephone to attempt to extort money or any other thing of value from any person, or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls ~~were are~~ received; ~~The use of obscene, lewd or profane language or the making of a threat or lewd or lascivious suggestions shall be prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy or offend.~~

(c) ~~Records records~~ or causes to be recorded any conversation by use of ~~any a~~ hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) ~~shall does~~ not apply to duly elected or appointed public officials or employees when ~~such the~~ transcription or recording is done in the performance of official duty, ~~nor~~ to persons speaking at public meetings, or to persons given warning of such the recording;

(d) ~~Attempts~~ by means of any machine, instrument, or contrivance, or in any other manner;

(i) ~~reads, or attempts to read any other manner reads, or attempts to read~~ any message or learn the contents thereof, while ~~the same~~ it is being sent over ~~any a~~ telegraph line;

(iii) ~~or~~ learns or attempts to learn the contents of any message, ~~whilst the same~~ while it is in ~~any a~~ telegraph office or is being received thereat or sent therefrom; or

(iii) ~~who~~ uses, or attempts to use, or ~~communicate communicates~~ to others, any information so obtained;

(e) ~~Discloses~~ discloses the contents of a telegraphic message or any part thereof, addressed to another person without the permission of such person, unless directed to do so by the lawful order of a court; or

(f) ~~Opens~~ opens or reads or causes to be read any sealed letter not addressed to himself, without being authorized to do so by either the writer of ~~such the~~ letter or ~~by~~ the person to whom it is addressed, ~~and every person who or~~, without the like authority, publishes any of the contents of ~~such letters~~ the letter knowing the same to have been unlawfully opened.

(2) A person convicted of the offense of violating ~~the~~ privacy in communications shall be fined not to exceed ~~five hundred dollars~~ (\$500) or be imprisoned in the county jail

1 for a term not to exceed ~~six~~ (6) months, or both."

2 Section 34. Section 94-8-201, R.C.M. 1947, is amended
3 to read as follows:

4 "94-8-201. ~~Machine guns definitions~~ Definitions. In
5 94-8-202 through 94-8-208 the following definitions apply:

6 (1) "Machine gun" ~~applies to and includes~~ means a
7 weapon of any description by whatever name known, loaded or
8 unloaded, from which more than six shots or bullets may be
9 rapidly, ~~or~~ automatically, or semiautomatically discharged
10 from a magazine, by a single function of the firing device.

11 (2) "Crime of violence" ~~applies to and includes~~ means
12 any of the following crimes or an attempt to commit any of
13 the same; ~~namely, murder, manslaughter, kidnapping, rape,~~
14 ~~mayhem, assault to do great bodily harm, any forcible~~
15 felony, robbery, burglary, housebreaking, breaking and
16 entering, and larceny and criminal trespass.

17 (3) "Person" ~~applies to and~~ includes a firm,
18 partnership, association, or corporation."

19 ~~Section 35. Section 94-8-202, R.C.M. 1947, is amended~~
20 ~~to read as follows:~~

21 ~~"94-8-202. Possession or use of machine gun is~~
22 ~~connection with a crime when unlawful. Possession or use~~
23 ~~of a machine gun in the perpetration commission or attempted~~
24 ~~perpetration commission of a crime of violence is hereby~~
25 ~~declared to be a crime an offense punishable by imprisonment~~

1 ~~in the state penitentiary prison for a term of not less than~~
2 ~~twenty 20 years or more than 50 years."~~

3 ~~Section 36. Section 94-8-203, R.C.M. 1947, is amended~~
4 ~~to read as follows:~~

5 ~~"94-8-203. Punishment for possession possession or use~~
6 ~~of machine gun for an offensive purpose. Possession or use~~
7 ~~of a machine gun for an offensive or aggressive purpose is~~
8 ~~hereby declared to be a crime an offense punishable by~~
9 ~~imprisonment in the state penitentiary prison for a term of~~
10 ~~not less than ten 10 years or more than 20 years."~~

11 Section 35. Section 94-8-204, R.C.M. 1947, is amended
12 to read as follows:

13 "94-8-204. Presumption of ~~possession or use for~~
14 offensive or aggressive purpose. Possession or use of a
15 machine gun shall be presumed to be for offensive or
16 aggressive purpose:

17 (a) (1) ~~When when~~ the machine gun is on premises not
18 owned or rented, for bona fide permanent residence or
19 business occupancy, by the person in whose possession the
20 machine gun may be found; ~~or~~

21 (b) (2) ~~When when the machine gun is~~ in the possession
22 of, or used by, ~~an unnaturalized foreign born person, or~~ a
23 person who has been convicted of a crime of violence in any
24 court of record, state or federal, ~~or~~ in the United States
25 of America, ~~or~~ its territories or insular possessions; ~~or~~

1 ~~(e)(3)~~ ~~When~~ when the machine gun is of the kind
2 described in ~~section~~ 94-8-208 and has not been registered as
3 required in ~~said that~~ section ~~required~~; or

4 ~~(d)(4)~~ ~~When~~ when empty or loaded pistol shells of 30
5 (.30 in. or 7.63 mm.) or larger caliber which have been or
6 are susceptible of use being used in the machine gun are
7 found in the immediate vicinity thereof."

8 Section 36. Section 94-8-210, R.C.M. 1947, is amended
9 to read as follows:

10 "94-8-210. Carrying ~~certain~~ concealed weapons in
11 cities or towns ~~forbidden punishment prohibited~~. Every
12 person who, within the limits of any city or town, carries
13 or bears concealed upon his person a dirk, dagger, pistol,
14 revolver, slingshot, ~~sword cane~~ sword cane, billy, knuckles
15 made of any metal or hard substance, knife having a blade
16 ~~four~~ 4 inches long or longer, razor, not including a safety
17 razor, or other deadly weapon, shall be punished by a fine
18 not exceeding ~~five hundred dollars~~ \$500 or by imprisonment
19 in the county jail for a period not exceeding ~~six~~ 6 months,
20 or by both ~~such fine and imprisonment~~, or may be punished by
21 imprisonment in the state penitentiary prison for a period
22 not exceeding ~~five~~ 5 years."

23 Section 37. Section 94-8-212, R.C.M. 1947, is amended
24 to read as follows:

25 "94-8-212. ~~Carrying certain concealed weapons outside~~

1 ~~of cities or towns forbidden punishment who excepted from~~
2 ~~set~~ Exceptions. The preceding sections Sections 94-8-210
3 and 94-8-211 shall do not apply to:

4 1. ~~A sheriff or his deputy;~~

5 2. ~~A marshal or his deputy;~~

6 3. ~~A constable or his deputy;~~

7 4. ~~A police officer or policeman;~~

8 5. ~~A United States marshal or his deputy;~~

9 6. ~~A person in the secret service of the United~~

10 ~~States;~~

11 7. ~~A game warden or his deputy;~~

12 8. ~~A U. S. forest reserve official or his deputy;~~

13 (1) any peace officer of the state of Montana;

14 (2) any officer of the United States government

15 authorized to carry a concealed weapon;

16 9. (3) A a person in actual service as a national
17 guardsman;

18 10. ~~A revenue officer or his deputy;~~

19 11. (4) A a person summoned to the aid of either any of
20 the foregoing named persons named in subsections (1) through
21 (3);

22 12. (5) A a civil officer or his deputy engaged in the
23 discharge of official business;

24 13. (6) A a person authorized by a judge of a district
25 court of this state to carry a weapon; or

14. ~~(7) The the~~ carrying of arms on one's own premises
or at ~~his one's~~ home or place of business.

15. ~~Any peace officer of the state of Montana;~~

16. ~~United States immigration and naturalization
service officers;~~

17. ~~National park service rangers."~~

Section 38. Section 94-8-214, R.C.M. 1947, is amended
to read as follows:

"94-8-214. ~~Concealed weapons district judge may issue
permits to carry~~ Permits to carry concealed weapons --
records -- revocation. (1) Any judge of a district court of
this state may grant permission to carry or bear, concealed
or otherwise, a pistol or revolver for a term not exceeding
~~one~~ 1 year.

(2) All applications for such permission must be made
by petition filed with the clerk of the district court. ~~No
charge may be made for the filing of which the petition no
charge shall be made.~~

(3) The applicant shall, if personally unknown to the
judge, furnish proof by a credible witness of his good moral
character and peaceable disposition.

(4) No such permission shall be granted any person who
is not a citizen of the United States and who has not been
an actual bona fide resident of the state of Montana for ~~six~~
6 months immediately next preceding the date of such

application.

(5) A record of permission granted shall be kept by
the clerk of the court, ~~which~~ The record shall state the
date of the application, the date of the permission, the
name of the person to whom permission is granted, the name
of the judge granting the permission, and the name of the
person, if any, by whom good moral character and peaceable
disposition are proved, ~~and which~~ The record must be signed
by the person who is granted such permission.

(6) The clerk shall thereupon issue under his hand and
the seal of the court a certificate, in a convenient card
form so that the same may be carried in the pocket, stating:

"Permission to authorizing him to carry or bear,
concealed or otherwise, a pistol or revolver for the period
of from the date hereof, has been granted by, a
judge of the district court of the judicial district of
the state of Montana, in and for the county of
....

"Witness the hand of the clerk and the seal of said
court this day of, 19...

....

Clerk."

(7) The date of the certificate shall be the date of
the granting of such permission. The certificate shall bear
upon its face the signature of the person receiving the

1 same.

2 (8) Upon good cause shown the judge granting such
3 permission may, ~~and~~ in his discretion without notice to the
4 person receiving such permission, revoke the same, ~~the~~ The
5 date of the revocation ~~being~~ shall be noted by the clerk
6 upon the record kept by him.

7 (9) All permissions to carry or bear concealed weapons
8 ~~heretofore~~ granted before March 3, 1919, are hereby
9 revoked."

10 Section 39. Section 94-8-218, R.C.M. 1947, is amended
11 to read as follows:

12 "94-8-218. Firing firearms. Every person who willfully
13 shoots or fires off, a gun, pistol, or any other firearm,
14 within the limits of any town or city, or of any private
15 inclosure which contains a dwelling house, is punishable by
16 a fine not exceeding ~~twenty-five dollars~~ \$25."

17 Section 40. Section 94-8-221, R.C.M. 1947, is amended
18 to read as follows:

19 "~~94-8-221. Firearms--use~~ Use of firearms by children
20 under ~~the~~ age of fourteen years prohibited. It ~~shall be~~ is
21 unlawful for ~~any~~ a parent, guardian, or other person, having
22 ~~the~~ charge or custody of ~~any~~ a minor child under the age of
23 ~~fourteen~~ 14 years, to permit ~~such~~ the minor child to carry
24 or use in public any firearms of any description, loaded
25 with powder and lead, ~~in public~~, except when ~~such~~ the child

1 is ~~in the company of such parent or guardian~~ accompanied by
2 a person having charge or custody of the child or under the
3 supervision of a qualified firearms safety instructor, who
4 has been ~~fully~~ authorized by ~~such~~ the parent or guardian."

5 Section 41. Section 3-228.3, R.C.M. 1947, is amended
6 to read as follows:

7 "3-228.3. Suspension or revocation of license. (1) The
8 department may, after notice and an opportunity for a
9 hearing in accordance with the Montana Administrative
10 Procedure Act ~~[82-4201 to 82-4225]~~ has have been afforded to
11 the licensee, suspend or revoke a license if the licensee
12 has failed to comply with this act or rules of the
13 department, or if the licensee has:

14 (a) violated this act or ~~section~~ 3-229;

15 (b) been found guilty of ~~fraud, deceit, dishonesty,~~
16 ~~forgery, burglary, or larceny~~ theft, or any other offense
17 defined in Title 94, chapter 6, part 3;

18 (c) failed or refused to furnish information, records,
19 or reports required by statute or rule.

20 (2) The department may, in accordance with the Montana
21 Administrative Procedure Act, summarily suspend a license
22 where the public health, safety, or welfare imperatively
23 requires emergency action."

24 Section 42. Section 5-1040, R.C.M. 1947, is amended to
25 read as follows:

"5-1040. Penalty for unlawful hypothecation of property received. Any officer or employee of any bank doing business in this state, who, except in the manner authorized by law or the contract of the parties, hypothecates, pledges, or in any way alienates any notes, stocks, bonds, mortgages, securities, or any other property coming into his hands or into the possession of ~~said the~~ bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, ~~shall be~~ is guilty of ~~embezzlement, theft~~ and upon conviction thereof shall be punished as for other felonies."

Section 43. Section 5-1044, R.C.M. 1947, is amended to read as follows:

"5-1044. ~~Embezzlement~~ Theft of bank funds by officers or employees. Any banker, officer, director, or employee of any bank who ~~embezzles fraudulently appropriates~~ or abstracts or misapplies any of the moneys, funds, credits, or property of the bank when owned by it or held in trust, or ~~who~~ issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree, with intent, in any case to injure or defraud the bank or any person or corporation, or to deceive any officer of the bank, or any other person, or ~~any one~~ anyone appointed to examine the affairs of ~~such the~~ bank, or

any person, who with like intent, aids or abets any officer, clerk, or employee in the violation of this section, ~~shall be is~~ guilty of ~~a felony theft~~ and upon conviction thereof, shall be imprisoned in the state ~~penitentiary prison~~ for a period of not exceeding ~~twenty~~ (20) years."

Section 44. Section 11-1916, R.C.M. 1947, is amended to read as follows:

"11-1916. ~~Embezzlement of Theft from~~ funds. Any person who ~~shall embezzle fraudulently appropriates~~ any of the money or other valuable thing belonging to the disability and pension fund of any fire department relief association, or who ~~shall take takes~~ part, in, or in any manner ~~aid aids~~ in any scheme or plan whereby ~~said the~~ fund or association ~~shall be is~~ defrauded out of any of the money in ~~said the~~ fund, ~~shall be is~~ guilty of ~~a felony, theft~~ and upon conviction thereof, shall be punished by imprisonment in the state prison for not less than ~~one~~ 1 year or more than ~~ten~~ 10 years."

Section 45. Section 14-631, R.C.M. 1947, is amended to read as follows:

"14-631. Duties of directors. ~~It shall be the duty of the~~ The directors to shall:

(1) act upon applications for membership, or ~~to~~ appoint one ~~(1)~~ or more membership officers to approve applications for membership under such conditions as the

1 board prescribes. A record of a membership officer's
2 approval or denial of membership shall be available to the
3 board of directors for inspection. A person denied
4 membership by a membership officer may appeal the denial to
5 the board.

6 (2) purchase a blanket fidelity bond, in accordance
7 with any rules and regulations of the director, to protect
8 the credit union against losses caused by occurrences
9 covered therein such as fraud, dishonesty, forgery,
10 embezzlement, theft, misappropriation, misapplication, or
11 unfaithful performance of duty by a director, officer,
12 employee, member of an official committee, ~~attorney-at-law~~
13 ~~attorney-at-law~~, or other agent;

14 (3) determine from time to time the interest rate or
15 rates consistent with this act, ~~which shall~~ to be charged on
16 loans and to authorize interest refunds, if any, to members
17 from income earned and received in proportion to the
18 interest paid by them on such classes of loans and under
19 such conditions as the board prescribes;

20 (4) fix from time to time the maximum amount which may
21 be loaned to any one member;

22 (5) declare dividends on shares in the manner and form
23 as provided in the bylaws;

24 (6) limit the number of shares which may be owned by a
25 member, such limitations to apply alike to all members;

1 (7) have charge of the investment of surplus funds,
2 except that the board of directors may designate an
3 investment committee or any qualified individual to have
4 charge of making investments under controls established by
5 the board of directors;

6 (8) authorize the employment of such persons necessary
7 to carry on the business of the credit union, including the
8 credit manager, loan officers, and auditing assistants
9 requested by the supervisory committee, and fix the
10 compensation, if any, of the treasurer and the general
11 manager and provide for compensation for other employees
12 within guidelines predetermined by the board of directors;

13 (9) authorize the conveyance of property;

14 (10) borrow or lend money to carry on the functions of
15 the credit union;

16 (11) designate a depository or depositories for the
17 funds of the credit union;

18 (12) suspend any or all members of the credit or
19 supervisory committee for failure to perform their duties;

20 (13) appoint any special committees ~~deemed~~ considered
21 necessary; and

22 (14) perform such other duties as the members from time
23 to time direct, and perform or authorize any action not
24 inconsistent with this act and not specifically reserved by
25 the bylaws for the members."

1 Section 46. Section 31-110, R.C.M. 1947, is amended to
2 read as follows:

3 "31-110. Offenses for which arrest may be made by
4 patrolmen ~~murder, etc.~~ -- patrolmen when patrolmen police
5 officers -- forbidden to act in labor disputes -- temporary
6 control of traffic in cities and towns -- investigations of
7 accidents -- inspection of livestock. (1) In addition to the
8 above duties, the highway patrol supervisor and all
9 patrolmen ~~are authorized under this act to~~ may make arrests
10 for the following offenses ~~committed~~, if committed in the
11 presence of ~~said~~ the supervisor or any of ~~said~~ the
12 patrolmen, ~~or~~; if committed in a rural district, upon the
13 request of a peace officer, ~~or~~ if committed in a city or
14 town of less than ~~twenty-five hundred~~ (2,500) inhabitants,
15 upon the request of any peace officer, or the mayor of ~~said~~
16 the city or town: ~~The crimes of murder, deliberate homicide,~~
17 assault with a deadly weapon, arson, criminal mischief,
18 burglary, larceny theft, kidnaping kidnapping, illegal
19 transportation of narcotics, or violation of the Dyer act
20 Act regarding the transportation of stolen automobiles.
21 ~~Provided, that such~~ Such highway patrolmen ~~shall~~ have no
22 authority and are expressly forbidden to make arrests in
23 labor disputes or ~~in preventing to prevent~~ violence in
24 connection with strikes, and ~~shall not be permitted to~~ may
25 not perform any duties whatsoever in connection with labor

1 disputes, strikes, or boycotts.

2 (2) Patrolmen ~~shall be deemed~~ are considered police
3 officers ~~in for the purpose of making arrests in for~~ all
4 offenses occurring on the highways ~~and in or involving~~ the
5 use of motor vehicles or the registration thereof, and for
6 the purpose of serving warrants of arrest in connection with
7 such violations.

8 (3) The patrolmen ~~Patrolmen are also hereby empowered~~
9 ~~to may~~ stop any truck or motor vehicle in which livestock or
10 livestock products are being transported and ascertain
11 whether the driver of such truck or vehicle is rightfully in
12 possession of such livestock or livestock products, ~~and~~
13 ~~whenever~~ If the patrolmen have good reason to believe that
14 ~~such~~ livestock or livestock products have been stolen, they
15 ~~are empowered to may~~ take possession of the same until ~~such~~
16 the livestock or livestock products can be delivered into
17 the custody of the sheriff or until such time as the facts
18 as to the actual ownership can be ascertained."

19 Section 47. Section 31-146, R.C.M. 1947, is amended to
20 read as follows:

21 "31-146. Mandatory revocation of license by board or
22 chief upon proper authority. The board or chief upon proper
23 authority shall ~~forthwith~~ revoke the license or operating
24 privilege of any operator or chauffeur upon receiving a
25 record of such operator's or chauffeur's conviction or

forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

1. ~~Manslaughter~~ negligent homicide resulting from the operation of a motor vehicle;

2. ~~Driving~~ driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, or a combination thereof;

3. ~~Any~~ any felony in the commission of which a motor vehicle is used;

4. ~~Failure~~ failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

5. ~~Perjury~~ perjury or the making of a false affidavit or statement under oath to the board under this act or under any other law relating to the ownership or operation of motor vehicles;

6. ~~Conviction~~ conviction or forfeiture of bail not vacated, upon three ~~(3)~~ charges of reckless driving committed within a period of ~~twelve~~ (12) months."

Section 48. Section 31-177, R.C.M. 1947, is amended to read as follows:

"31-177. Definitions. As used in this act, ~~the~~ the following definitions apply:

(1) "Habitual traffic offender" means any person, who, within a ~~five~~ (5)-year 5-year period, from and after passage of this act, accumulates ~~thirty~~ (30) or more conviction points according to the schedule specified in this subsection;

(a) ~~first or second degree murder~~ deliberate homicide resulting from the operation of a motor vehicle, ~~fifteen~~ (15) points;

(b) ~~voluntary or involuntary manslaughter~~ mitigated deliberate homicide or negligent homicide resulting from operation of a motor vehicle, ~~twelve~~ (12) points;

(c) any offenses punishable as a felony under the motor vehicle laws of Montana, or any felony in the commission of which a motor vehicle is used, ~~twelve~~ (12) points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind, ~~ten~~ (10) points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, ~~ten~~ (10) points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, ~~eight~~ (8) points;

(g) willful failure of the driver involved in an accident resulting in property damage of ~~two hundred fifty dollars (\$250)~~ to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, ~~four (4)~~ points;

(h) reckless driving, ~~five (5)~~ points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, ~~six (6)~~ points;

(j) operating a motor vehicle without a license to do so, ~~six (6)~~ points, ~~except as hereafter provided~~ [this subsection (j) does not apply to operating a motor vehicle while license has expired within a period of one hundred and eighty (180) days from the date the license expired];

(k) speeding, ~~three (3)~~ points;

(l) all other moving violations, including operation of a motor vehicle without a license to do so ~~where said when the~~ license has expired in the previous ~~one hundred and eighty (180) days, two (2) points, (1) there~~ There shall be no multiple application of cumulative points when two ~~(2)~~ or more charges are filed involving a single occurrence. If there are two ~~(2)~~ or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

(2) "Conviction" means a finding of guilt by duly

constituted judicial authority, ~~or~~ a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(3) "Administrator" means the Montana highway patrol chief.

(4) "Bureau" means the Montana highway patrol bureau.

(5) "License" means any ~~and all types type~~ of licenses license or ~~permits permit~~ to operate a motor vehicle."

Section 49. Section 40-2905, R.C.M. 1947, is amended to read as follows:

"40-2905. "Casualty insurance" defined. 1) Casualty insurance includes:

(a) ~~Vehicle vehicle~~ insurance which is ~~insurance~~ insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause; and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle, aircraft, or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting

1 from, adjusting, repairing, cranking, or caused by being
2 struck by a vehicle, aircraft, or draft or riding animal, if
3 such insurance is issued as an incidental part of insurance
4 on the vehicle, aircraft, or draft or riding animal;

5 (b) ~~Liability~~ liability insurance, ~~insurance which is~~
6 insurance against legal liability for the death, injury, or
7 disability of any human being, or for damage to property,
8 and provision of medical, hospital, surgical, and disability
9 benefits to injured persons and funeral and death benefits
10 to dependents, beneficiaries, or personal representatives of
11 persons killed, irrespective of legal liability of the
12 insured, when issued as an incidental coverage with or
13 supplemental to liability insurance;

14 (c) ~~Workmen's~~ workers' compensation and employer's
15 liability, ~~insurance which is insurance~~ of the obligations
16 accepted by, imposed upon, or assumed by employers under law
17 for death, disablement, or injury of employees;

18 (d) ~~Burglary~~ burglary and theft, ~~insurance which is~~
19 insurance against loss or damage by burglary, theft,
20 ~~larceny~~, robbery, forgery, fraud, deceptive practices,
21 vandalism, ~~malicious~~ criminal mischief, confiscation, or
22 wrongful conversion, disposal, or concealment, or from any
23 attempt at any of the foregoing, including supplemental
24 coverage for medical, hospital, surgical, and funeral
25 expense incurred by the named insured or any other person as

1 a result of bodily injury during the commission of a
2 burglary, robbery, or theft by another; also insurance
3 against loss of or damage to moneys, coins, bullion,
4 securities, notes, drafts, acceptances, or any other
5 valuable papers and documents, resulting from any cause;

6 (e) ~~Personal~~ personal property floater, ~~insurance~~
7 which is insurance upon personal effects against loss or
8 damage from any cause under a personal property floater;

9 (f) ~~Glass~~, ~~insurance glass which is insurance~~ against
10 loss or damage to glass, including its lettering,
11 ornamentation, and fittings;

12 (g) ~~Boiler~~ boiler and machinery, ~~insurance which is~~
13 insurance against any liability and loss or damage to
14 property or interest resulting from accident to or
15 explosions of boilers, pipes, pressure containers,
16 machinery, or apparatus, and ~~to make from making~~ inspection
17 of and ~~issue~~ issuing certificates of inspection upon
18 boilers, machinery, and apparatus of any kind, whether or
19 not insured;

20 (h) ~~Leakage~~ leakage and fire extinguishing equipment,
21 ~~insurance which is insurance~~ against loss or damage to any
22 property or interest caused by the breakage or leakage of
23 sprinklers, hoses, pumps, and other fire extinguishing
24 equipment or apparatus, water pipes, or containers, or by
25 water entering through leaks or openings in buildings, and

1 insurance against loss or damage to such sprinklers, hoses,
2 pumps, and other fire extinguishing equipment or apparatus;

3 (i) ~~Credit.~~ Insurance credit which is insurance
4 against loss or damage resulting from failure of debtors to
5 pay their obligations to the insured;

6 (j) ~~Malpractice.~~ Insurance malpractice which is
7 insurance against legal liability of the insured, and
8 against loss, damage, or expense incidental to a claim of
9 such liability, and including medical, hospital, surgical,
10 and funeral benefits to injured persons, irrespective of
11 legal liability of the insured, arising out of the death,
12 injury, or disablement of any person, or arising out of
13 damage to the economic interest of any person, as the result
14 of negligence in rendering expert, fiduciary, or
15 professional service;

16 (k) ~~Elevator.~~ Insurance elevator which is insurance
17 against loss or damage to any property of the insured,
18 resulting from the ownership, maintenance, or use of
19 elevators, except loss or damage by fire, and ~~to make from~~
20 ~~making~~ inspection of and ~~issue~~ issuing certificates of
21 inspection upon elevators;

22 (l) ~~Livestock.~~ Insurance livestock which is insurance
23 against loss or damage to livestock, and for services of a
24 veterinary for such animals;

25 (m) ~~Entertainments.~~ Insurance entertainments which is

1 insurance indemnifying the producer of any motion picture,
2 television, radio, theatrical, sport, spectacle,
3 entertainment, or similar production, event, or exhibition
4 against loss from interruption, postponement, or
5 cancellation thereof due to death, accidental injury, or
6 sickness of performers, participants, directors, or other
7 principals;

8 (n) ~~Miscellaneous.~~ Insurance miscellaneous which is
9 insurance against any other kind of loss, damage, or
10 liability properly a subject of insurance and not within any
11 other kind of insurance as defined in this chapter, if such
12 insurance is not disapproved by the commissioner as being
13 contrary to law or public policy.

14 (2) Provision of medical, hospital, surgical, and
15 funeral benefits, and of coverage against accidental death
16 or injury, as incidental to and part of other insurance as
17 stated under subdivisions (a) (vehicle), (b) (liability),
18 (d) (burglary), and (j) (malpractice) of subsection (1)
19 shall for all purposes be ~~deemed~~ considered to be the same
20 kind of insurance to which it is so incidental, and shall
21 not be subject to provisions of this code applicable to life
22 or disability insurances."

23 Section 50. Section 40-2906, R.C.M. 1947, is amended
24 to read as follows:

25 "40-2906. "Surety insurance" defined. Surety insurance

1 includes:

2 (1) ~~Fidelity~~ fidelity insurance, which is insurance
3 guaranteeing the fidelity of persons holding positions of
4 public or private trust;

5 (2) ~~Insurance~~ insurance guaranteeing the performance
6 of contracts, other than insurance policies, and
7 guaranteeing and executing bonds, undertakings, and
8 contracts of suretyship;

9 (3) ~~Insurance~~ insurance indemnifying banks, bankers,
10 brokers, financial or moneyed corporations or associations
11 against check forgery or alteration, or against loss
12 resulting from any cause, of bills of exchange, notes,
13 bonds, securities, evidences of debt, deeds, mortgages,
14 warehouse receipts, or other valuable papers, documents,
15 money, precious metals, and articles made therefrom,
16 jewelry, watches, necklaces, bracelets, gems, or precious
17 and semiprecious stones, including any loss while the same
18 are being transported in armored motor vehicles, by mail, or
19 by messenger, but not including any other risks of
20 transportation or navigation; also insurance against loss or
21 damage to such an insured's premises or to his furnishings,
22 fixtures, equipment, safes, and vaults therein, caused by
23 burglary, robbery, theft, vandalism, or ~~malicious~~ criminal
24 mischief, or any attempt thereat."

25 Section 51. Section 40-3324, R.C.M. 1947, is amended

1 to read as follows:

2 "40-3324. Reporting and accounting for premiums. (1)

3 All premiums or return premiums received by an agent or
4 solicitor shall be trust funds so received by the licensee
5 in a fiduciary capacity, and the agent or solicitor shall in
6 the applicable regular course of business account for and
7 pay the same to the insured, insurer, or agent entitled
8 thereto. If the licensee establishes a separate deposit for
9 funds so belonging to others in order to avoid a commingling
10 of such fiduciary funds with his own funds, he may deposit
11 and commingle in the same such separate deposit all such
12 funds belonging to others so long as the amount of such
13 deposit so held for each respective other person is
14 reasonably ascertainable from the records and accounts of
15 the licensee.

16 (2) Any agent or solicitor who, not being lawfully
17 entitled thereto, diverts or appropriates such funds or any
18 portion thereof to his own use, ~~shall be~~ is, upon conviction,
19 be guilty of ~~larceny~~ theft and shall be punished as provided
20 by law."

21 Section 52. Section 46-104, R.C.M. 1947, is amended to
22 read as follows:

23 "46-104. Duties and powers of department. The
24 department shall exercise general supervision over, and, so
25 far as possible, protect the livestock interests of the

1 state from theft and disease, and recommend legislation
 2 which, in the judgment of the department, fosters this
 3 industry. The department may compel the attendance of
 4 witnesses, employ counsel to assist in the prosecution of
 5 violations of laws made for the protection of the livestock
 6 interests, and assist in the prosecution of persons charged
 7 with ~~feloniously~~ illegal branding or ~~stealing theft of~~
 8 livestock, or any other crime under the laws of this state
 9 for the protection of stock owners. It may adopt rules
 10 governing the recording and use of livestock brands."

11 Section 53. Section 46-703, R.C.M. 1947, is amended to
 12 read as follows:

13 "46-703. Duties. The stock inspectors and detectives
 14 shall arrest all persons who in their presence violate the
 15 stock laws of this state. Every stock inspector and
 16 detective, on information that a person has committed an
 17 offense against the laws of this state by engaging in
 18 illegal, in feloniously branding or ~~stealing theft of~~ stock
 19 of, or an offense against the laws of this state for the
 20 protection of the rights and interests of stock owners, must
 21 make the necessary affidavit for the arrest and examination
 22 of the person, and on a warrant issued for the person,
 23 immediately arrest the person and bring him before the
 24 proper officer and notify the department of his acts."

25 Section 54. Section 66-1602, R.C.M. 1947, is amended

1 to read as follows:

2 "66-1602. Search warrant may issue. Whenever any
 3 person makes oath before a magistrate that any property
 4 belonging to him has been ~~embezzled or taken without his~~
 5 ~~consent~~ taken by theft or otherwise without his consent, and
 6 that he has reason to believe or suspect, and does suspect,
 7 that such property has been pledged with any pawnbroker or
 8 junk dealer, such magistrate, if satisfied, must issue his
 9 warrant to search for the property so taken, and, if found,
 10 to seize and bring the same before him."

11 Section 55. Section 67-2129, R.C.M. 1947, is amended
 12 to read as follows:

13 "67-2129. Revocation. (1) A registration may be
 14 revoked after notice and hearing upon a written finding of
 15 fact that the subdivider has:

16 (a) ~~Failed~~ failed to comply with the terms of a cease
 17 and desist order;

18 (b) ~~Been been~~ convicted in any court subsequent to the
 19 filing of the application for registration of a crime
 20 involving fraud, ~~deception~~ deceptive practices, false
 21 pretenses, misrepresentation, false advertising, or
 22 dishonest dealing in real estate transactions;

23 (c) ~~Disposed~~ disposed of, concealed, or diverted any
 24 funds or assets of any person so as to defeat the rights of
 25 subdivision purchasers;

(d) ~~Failed~~ failed faithfully to perform any stipulation or agreement made with the board as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(e) ~~Made~~ made intentional misrepresentations or concealed material facts in an application for registration.

~~(2)~~ Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

~~(3)~~ If the board finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead."

Section 56. Section 69-1929, R.C.M. 1947, is amended to read as follows:

"69-1929. Penalty when death caused by violation of this act. When the death of any person is caused by the explosion of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance that has been stored, kept, handled, or transported, contrary to the provisions of the foregoing sections, the person or persons who have so unlawfully stored, kept, handled, or transported such explosives, or who may have knowingly or negligently permitted their agents, servants, or employees

to so unlawfully store, keep, handle, or transport the same, ~~shall be~~ are guilty of ~~manslaughter~~, negligent homicide and, on conviction, shall be punished by imprisonment in the state ~~penitentiary prison~~ for a period not exceeding ~~ten~~ 10 years."

Section 57. Section 72-116, R.C.M. 1947, is amended to read as follows:

"72-116. Power of board to fix rates, schedules, and classifications. ~~The power and authority is hereby vested in the said~~

~~(1) The board, and it is hereby made its duty to~~ shall ~~adopt, as seen as practicable after the organization of the board,~~ all necessary rates, charges, and regulations to govern and regulate freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and ~~extortion~~ intimidation in the rates of freight and passenger tariffs on the different railroads in this state, and to make the same effective by enforcing the penalties prescribed in this act. ~~The said board shall have the power, and it shall be its duty, to~~ fairly and justly classify and subdivide all freight and merchandise of ~~whatsoever~~ whatever character that may be transported over railroads of this state, into such general and special classes or subdivisions as may be ~~deemed~~ considered necessary or expedient. The ~~said~~ board may fix different rates for different railroads and

for different lines under the same management, or for different parts of the same lines, if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads. ~~Said The~~ board shall also ~~have the power, and it shall be its duty, to~~ fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight, and cars that may pass over two or more lines of such railroads.

(2) The rates, tolls, or charges on any property, which shall for any reason remain unclassified by the board, shall not in any event exceed the highest rates fixed for any classification by ~~said the~~ board. ~~and it shall be within the province of the The~~ board to ~~may~~ entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the state of Montana, or any point therein, in the way of rates for the transportation of freight or passengers from points without the state to points within the state, and vice versa, ~~and in~~ In proper cases, where it appears that the United States interstate commerce commission law has been violated, ~~it is hereby made the duty of said the~~ board ~~to make complaint shall complain~~ to the interstate commerce commission of the United States, and ~~to~~ aid such commission in any investigation it may make concerning violations of the

United States law, by furnishing evidence, and in any other manner which may seem best suited to enforce both the United States and state law, and to protect the interests of the people."

Section 58. Section 72-126, R.C.M. 1947, is amended to read as follows:

"72-126. Prohibition against rebates and discrimination. If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, ~~shall charge, demand charges, demands, or receive receives~~ from any person, firm, or corporation, a greater or less compensation for any service rendered, or to be rendered, in the transportation of property subject to the provisions of this act, than that fixed by the ~~said~~ commission for such service, such railroad ~~shall be deemed is~~ guilty of ~~extortion intimidation~~, and shall forfeit and pay to the state of Montana not less than ~~five hundred dollars nor \$500 or~~ more than ~~two thousand dollars \$2,000~~ for each offense; ~~provided, that nothing herein shall be so construed as to prevent. Nothing in this section prevents~~ any railroad or railroad corporation from giving excursion rates to or from any point within or without the state."

Section 59. Section 72-127, R.C.M. 1947, is amended to read as follows:

"72-127. Discrimination in rates and charges. If any

childred subject to this act, or its agents or officers,
 shall hereafter collect, ~~charge, demand, or receive~~
~~collect, demand, or receive~~ any money,
 company, fund, or corporation, a greater rate, charge, or
 compensation than that fixed and established by the law
 enacted for the transportation of freight, passengers,
 passengers, or cargo, or for the use of any of the lines
 of the railroad, or any line, operated by any or any
 one of its companies, branches, or holding any real estate
 used for any other service provided, or to be provided,
 by it, which railroad and its agents and officers shall
 discontinue paying of interest on bonds and shall
 default and pay to the state of Nevada a sum not less than
~~the amount of bonds and interest~~ more than ~~one~~ ~~thousand~~
~~dollars \$2,000.~~

Section 60. Section 79-811, N.C.S. 1927, is amended to
 read as follows:

"79-811. Temporary suspension of treasurer. The ~~if,~~
~~upon examination, the state board of examiners, and, upon~~
~~examination, said~~ finds that the books of the state
 treasurer do not correspond with the amount of funds on
 hand, or do not show the actual condition of the funds, or
~~if it appear to said board that any moneys belonging to the~~
 state have been embezzled, diverted, or in any manner taken
 diverted or taken by theft, or any other means from the

treasury, without authority of law, or that the state
 treasurer has been guilty of negligence in keeping his
 books, or in taking care of the public moneys, the board
 must certify the fact to the governor or she, upon receipt of
 such certificate, must ~~immediately~~ immediately take action
 of said books, papers, and other property belonging
 to the state which have come into the possession of such
 state treasurer, by giving of his office or officers, and
 must temporarily suspend the ~~the~~ treasurer from his office
~~at once~~ ~~thereupon~~.

Section 61. Section 79-812, N.C.S. 1927, is amended to
 read as follows:

"79-812. Appointment in place of suspended treasurer.
 All the state board of examiners must thereupon prepare the
 services of an agent to examine the books, papers, and all
 matters connected with the office of the state treasurer so
 suspended, and if it appears to said the board or such
 examination that such the state treasurer has embezzled or
 converted to his own use ~~an~~ ~~unaccounted~~ ~~theft~~ of the public
 moneys, or has been negligent in keeping his books, or in
 taking care of the public moneys, the governor, or the
 certificate of said the board of that fact, must appoint
 another person to fill the place of such suspended state
 treasurer, and such person so appointed must execute an
 official bond and enter upon the office of state treasurer,

1 as provided by law.

2 (2) The governor must report all his acts done under
3 this section and ~~the next preceding section 79-811~~ to the
4 next succeeding ~~legislative assembly~~ legislature, and the
5 state treasurer so appointed holds his office until the
6 suspended state treasurer is restored or his successor is
7 elected and qualified."

8 Section 62. Section 79-2314, R.C.M. 1947, is amended
9 to read as follows:

10 "79-2314. Information from state agencies. (1) All
11 state agencies shall aid and assist the legislative auditor
12 in the auditing of books, accounts, and records.

13 (2) The legislative auditor may examine at any time
14 the books, accounts, and records, confidential or otherwise,
15 of a state agency, ~~however, this~~ this shall not be
16 construed as authorizing the publication of information
17 which the law prohibits publishing.

18 (3) The head of each state agency shall immediately
19 notify the legislative auditor in writing upon the discovery
20 of any ~~larceny, or embezzlement~~ theft, actual or suspected,
21 involving state moneys or property under his control or for
22 which he is responsible."

23 Section 63. Section 87A-2-403, R.C.M. 1947, is amended
24 to read as follows:

25 "87A-2-403. Power to transfer -- good faith purchase

1 of goods -- "entrusting". (1) A purchaser of goods acquires
2 all title which his transferor had or had power to transfer
3 except that a purchaser of a limited interest acquires
4 rights only to the extent of the interest purchased. A
5 person with voidable title has power to transfer a good
6 title to a good faith purchaser for value. When goods have
7 been delivered under a transaction of purchase the purchaser
8 has such power even though:

9 (a) the transferor was deceived as to the identity of
10 the purchaser; ~~or~~

11 (b) the delivery was in exchange for a check which is
12 later dishonored; ~~or~~

13 (c) it was agreed that the transaction was to be a
14 "cash sale"; or

15 (d) the delivery was procured through fraud punishable
16 as ~~larceny~~ theft under the criminal law.

17 (2) Any entrusting of possession of goods to a
18 merchant who deals in goods of that kind gives him power to
19 transfer all rights of the entruster to a buyer in ordinary
20 course of business.

21 (3) "Entrusting" includes any delivery and any
22 acquiescence in retention of possession regardless of any
23 condition expressed between the parties to the delivery or
24 acquiescence and regardless of whether the procurement of
25 the entrusting or the possessor's disposition of the goods

1 have has been such as to ~~be-larcenous~~ constitute theft under
2 the criminal law.

3 (4) The rights of other purchasers of goods and of
4 lien creditors are governed by the ~~Chapters~~ chapters on
5 ~~Secured~~ secured Transactions transactions (~~Chapter~~ chapter
6 9), ~~Bulk~~ bulk Transfers transfers (~~Chapter~~ chapter 6) and
7 ~~Secured~~ documents documents of Title title (~~Chapter~~ chapter 7)."

8 Section 64. Section 89-714, R.C.M. 1947, is amended to
9 read as follows:

10 "89-714. Penalties. Any person violating any of the
11 provisions of this chapter is punishable as provided in
12 ~~section 94-35-105~~, and if death ~~ensue~~ ensues by reason of
13 any of the acts prohibited by this chapter, the person
14 guilty of the same may be convicted of ~~murder, manslaughter,~~
15 ~~or any other felony, as the case may be~~ homicide."

16 Section 65. Section 91-608, R.C.M. 1947, is amended to
17 read as follows:

18 "91-608. Order to examine party charged with
19 ~~embezzling~~ misappropriating estate. When the public
20 administrator complains to the district court, or a judge
21 thereof, on oath, that any person has concealed, ~~embezzled~~
22 committed theft of, or disposed of, or has in his possession
23 any money, goods, property, or effects, to the possession of
24 which such administrator is entitled in his official
25 capacity, the court or judge may cite such person to appear,

1 and may examine him on oath touching the matter of such
2 complaint."

3 Section 66. Section 91-2301, R.C.M. 1947, is amended
4 to read as follows:

5 "91-2301. ~~Embezzling~~ Mishandling of estate before
6 grant of letters testamentary. If any person, before the
7 granting of letters testamentary or of administration,
8 ~~embezzles~~ commits theft of or alienates any of the moneys,
9 goods, chattels, or effects of a decedent, he is charged
10 therewith and liable to an action by the executor or
11 administrator of the estate for double the value of the
12 property so ~~embezzled or alienated~~ mishandled, to be
13 recovered for the benefit of the estate."

14 Section 67. Section 91-2302, R.C.M. 1947, is amended
15 to read as follows:

16 "91-2302. Citation to person suspected ~~to have~~
17 ~~embezzled~~ of having mishandled estate, etc. If any executor
18 or administrator, or any person interested in the estate of
19 a decedent, complains to the court or judge, on oath, that
20 any person is suspected ~~to have~~ of having concealed,
21 ~~embezzled~~, smuggled, conveyed away, ~~or~~ disposed of, or
22 committed theft of any moneys, goods, or chattels of the
23 decedent, or has in his possession or knowledge any deeds,
24 conveyances, bonds, contracts, or other writings, which
25 contain evidences of or tend to disclose the right, title,

1 interest, or claim of the decedent to any real or personal
2 estate, or any claim or demand, or any lost will, the said
3 court or judge may cite such person to appear before such
4 the court, and may examine him on oath upon the matter of
5 such the complaint. If such person is not in the county
6 where such the decedent dies, or where letters have been
7 granted, he may be cited and examined either before the
8 district court or judge of the county where the decedent
9 dies, or where letters have been granted. But if he appears
10 and is found innocent, his necessary expenses must be
11 allowed him out of the estate."

12 Section 68. Section 91-2303, R.C.M. 1947, is amended
13 to read as follows:

14 "91-2303. Refusal to obey citation, ~~penalty for, and~~
15 ~~for embezzlement may be compelled to disclose by~~
16 ~~imprisonment liable for double damages -- order for~~
17 disclosure. If the person so cited refuses to appear and
18 submit to an examination, or to answer such interrogatories
19 as may be put to him, touching the matters of the complaint,
20 the court or judge may, by warrant for that purpose, commit
21 him to the county jail, there to remain in close custody
22 until he submits to the order of the court, or is discharged
23 according to law. If, upon examination, it appears that he
24 has concealed, ~~embezzled~~, smuggled, conveyed away, or
25 disposed of, or committed theft of any moneys, goods, or

1 chattels of the decedent, or that he has in his possession
2 or knowledge any deeds, conveyances, bonds, contracts, or
3 other writings containing evidence of or tending to disclose
4 the right, title, interest, or claim of the decedent to any
5 real or personal estate, claim, or demand, or any lost will
6 of the decedent, the court or judge may make an order
7 requiring such person to disclose his knowledge thereof to
8 the executor or administrator, and may commit him to the
9 county jail, there to remain until the order is complied
10 with, or he is discharged according to law; and all such
11 interrogatories and answers must be in writing, signed by
12 the party examined, and filed in the court. The order for
13 such disclosure made upon such examination shall be prima
14 facie evidence of the right of the executor or administrator
15 to such property in any action brought for the recovery
16 thereof, and any judgment recovered therein must be for
17 double the value of the property as assessed by the court or
18 jury, or for the return of the property and damages in
19 addition thereto, equal to the value of such property. In
20 addition to the examination of the party, witnesses may be
21 produced and examined on either side."

22 Section 69. Section 93-4002, R.C.M. 1947, is amended
23 to read as follows:

24 "93-4002. When defendant may be arrested in a civil
25 action. The defendant may be arrested in the following

1 cases:

2 4-~~(1)~~ 1 ~~is~~ in an action for the recovery of money or
3 damages, on a cause of action arising upon contract, express
4 or implied, when the defendant is about to depart from the
5 state, with intent to defraud his creditors; or when the
6 action is for willful injury to person, to character, or to
7 property, knowing the property to belong to another;

8 2-~~(2)~~ 2 ~~is~~ in an action for a fine or penalty, or for
9 money or property ~~embezzled, or~~ fraudulently misapplied, or
10 converted to his own use, by a public officer, ~~or~~ an officer
11 of a corporation, or an attorney, factor, broker, agent, or
12 clerk, in the course of his employment as such, or by any
13 other person in a fiduciary capacity, ~~or~~ for misconduct or
14 neglect in office, or in a professional employment, ~~or~~ for
15 a willful violation of duty;

16 3-~~(3)~~ 3 ~~is~~ in an action to recover possession of
17 personal property unjustly obtained, when the property, or
18 any part thereof, has been concealed, removed, or disposed
19 of so that it cannot be found, or taken by the sheriff;

20 4-~~(4)~~ 4 ~~when~~ when the defendant has been guilty of fraud
21 in contracting the debt, incurring the obligation for which
22 the action is brought, or in concealing or disposing of the
23 property, or for taking, detention, or conversion of which
24 the action is brought;

25 5-~~(5)~~ 5 ~~when~~ when the defendant has removed or disposed

1 of his property, or is about to do so, with intent to
2 defraud his creditors."

3 Section 70. Section 94-8-405, R.C.M. 1947, is amended
4 to read as follows:

5 "94-8-405. Obtaining money by means of gambling games
6 or tricks ~~deemed to be larceny~~ considered theft. Every
7 person who, by means of any game, device, sleight-of-hand
8 trick, or other means whatever, by the use of cards or other
9 implements other than those mentioned in ~~the following~~
10 ~~section hereof~~ 94-8-406, or while betting on sides, or
11 hands, of any such game or play, fraudulently obtains from
12 another person money or property of any description, ~~shall~~
13 ~~be deemed~~ is guilty of ~~larceny~~ theft of property of like
14 value."

15 Section 71. Section 95-408, R.C.M. 1947, is amended to
16 read as follows:

17 "95-408. Stolen property. ~~Where~~ When a person obtains
18 property by ~~larceny~~ theft, robbery, ~~false pretences or~~
19 ~~embezzlement or deceptive practices~~, he may be tried in any
20 county in which he exerted control over such property."

21 Section 72. Section 69-1931, R.C.M. 1947, is
22 renumbered 94-8-209.1 and is amended to read as follows:

23 "~~69-1931~~ 94-8-209.1. Destructive device — and
24 explosive defined. (1) "Destructive device", as used in this
25 chapter, ~~shall include~~ includes, but is not limited to, the

1 following weapons:

2 (a) ~~Any~~ a projectile containing ~~any~~ an explosive or
3 incendiary material or any other similar chemical substance,
4 including, but not limited to, that which is commonly known
5 as tracer or incendiary ammunition, except tracer ammunition
6 manufactured for use in shotguns;

7 (b) ~~Any~~ a bomb, grenade, explosive missile, or similar
8 device or ~~any~~ a launching device therefor;

9 (c) ~~Any~~ a weapon of a caliber greater than .50 caliber
10 which fires fixed ammunition, or any ammunition therefor,
11 other than a shotgun or shotgun ammunition;

12 (d) ~~Any~~ a rocket, rocket-propelled projectile, or
13 similar device of a diameter greater than 0.60 inch, or ~~any~~
14 a launching device therefor, and ~~any~~ a rocket,
15 rocket-propelled projectile, or similar device containing
16 ~~any~~ an explosive or incendiary material or any other similar
17 chemical substance, other than the propellant for ~~such~~ the
18 device, except ~~such~~ devices ~~as are~~ designed primarily for
19 emergency or distress signaling purposes;

20 (e) ~~Any~~ a breakable container which contains a
21 flammable liquid with a flashpoint of 150 degrees Fahrenheit
22 or less and which has a wick or similar device capable of
23 being ignited, other than a device which is commercially
24 manufactured primarily for the purpose of illumination.

25 (2) "Explosive," as used in this chapter, ~~shall mean~~

1 means any explosive defined in ~~section~~ 69-1901, ~~R.C.M.~~,
2 1947."

3 Section 73. Section 69-1932, R.C.M. 1947, is
4 renumbered 94-8-209.2 and is amended to read as follows:

5 "~~69-1932~~ 94-8-209.2. Possession of a destructive
6 device ~~or explosive with felonious intent~~ penalty. (1)
7 ~~Every~~ A person who, with ~~intent~~ the purpose to commit a
8 felony, has in his possession any destructive device ~~or any~~
9 ~~explosive~~ on a public street or highway, in or near any
10 theater, hall, school, college, church, hotel, other public
11 building, or private habitation, in, on, or near any
12 aircraft, railway passenger train, car, vessel engaged in
13 carrying passengers for hire, or other public place
14 ordinarily passed by human beings is guilty of ~~a felony~~ the
15 offense of possession of a destructive device.

16 (2) and A person convicted of the offense of possession
17 of a destructive device shall be punishable by imprisonment
18 imprisoned in the state prison for a period of not more than
19 ~~ten~~ 10 years."

20 Section 74. Section 94-6-105, R.C.M. 1947, is
21 renumbered 94-8-209.3 and is amended to read as follows:

22 "~~94-6-105~~ 94-8-209.3. Possession of explosives. (1) A
23 person commits the offense of possession of explosives if he
24 possesses, manufactures, ~~or transports, buys, or sells~~ any
25 an explosive compound, flammable material, or timing, or

1 detonating, or similar device for use with ~~any an~~ explosive
2 compound or incendiary device; and:

3 (a) has the purpose to use such explosive, material,
4 or device to commit ~~any an~~ offense; or

5 (b) knows that another has the purpose to use such
6 explosive, material, or device to commit ~~any an~~ offense.

7 (2) A person convicted of the offense of possession of
8 explosives shall be imprisoned in the state prison for any
9 term not to exceed ~~twenty~~ (20) years."

10 Section 75. There is a new R.C.M. section numbered
11 94-8-209.4 that reads as follows:

12 94-8-209.4. Possession of a silencer. (1) A person
13 commits the offense of possession of a silencer if he
14 possesses, manufactures, transports, buys, or sells a
15 silencer and has the purpose to use it to commit an offense
16 or knows that another person has such a purpose.

17 (2) A person convicted of the offense of possession of
18 a silencer is punishable by imprisonment in the state prison
19 for a term of not less than 5 years or more than 30 years or
20 a fine of not less than \$1,000 or more than \$20,000 or by
21 both such fine and imprisonment.

22 Section 76. There is a new R.C.M. section numbered
23 94-8-209.5 that reads as follows:

24 94-8-209.5. Possession prima facie evidence of
25 unlawful purpose. Possession of a silencer or of an

1 explosive ~~compound, flammable material, or timing,~~
2 ~~detonating, or similar device for use with an explosive~~
3 ~~compound or incendiary device~~ A BOMB OR SIMILAR DEVICE
4 CHARGED OR FILLED WITH ONE OF MORE EXPLOSIVES is prima facie
5 evidence of a purpose to use the same to commit an offense.

6 SECTION 77. REPEALER. SECTIONS 69-1916, 94-5-601,
7 94-5-611, 94-5-612, 94-6-101, 94-6-301, 94-7-101, 94-7-201,
8 94-8-223, 94-8-224, AND 94-8-225, R.C.M. 1947, ARE REPEALED.

-End-